IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1609

TERRY T. TORRES,

Appellant,

—v.—

COMMONWEALTH OF PUERTO RICO,

Appellee.

JURISDICTIONAL STATEMENT

JOSEPH REMCHO
ROBIN B. JOHANSEN
155 Montgomery Street, #1502
San Francisco, California 94104

CELEDONIO MEDIN LOZADA HERNANDEZ
CELEDONIO MEDIN LOZADA GENTILE
Calle Leon #133—Apartado 1034
Mayaguez, Puerto Rico 00708

Attorneys for Appellant

I N D E X

TABLE OF AUTHORITIES

Constitutional Provisions and Statutes

Other Authorities

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1977

NO.

TERRY T. TORRES,

Appellant,

vs.

COMMONWEALTH OF PUERTO RICO,

Appellee.

JURISDICTIONAL STATEMENT

Appellant, Terry T. Torres, appeals from the final Judgment of the Supreme Court of Puerto Rico, entered on December 14, 1977, affirming his conviction for possession of marihuana.

OPINIONS BELOW

The opinion of the Supreme Court of Puerto Rico was originally rendered in the Spanish language and is as yet unreported. A true copy of the official English translation by the Supreme Court of Puerto Rico is reproduced as Appendix A. The English translation of the Judgment of the Supreme Court of Puerto Rico affirming petitioner's conviction is reproduced as Appendix B.

The opinion of the Superior Court of the Commonwealth of Puerto Rico, San Juan Part, was originally rendered in the Spanish language and is unreported. An official English translation of that opinion was prepared by the Supreme Court of Puerto Rico and is reproduced as Appendix C.

JURISDICTION

In the criminal trial below, appellant challenged the validity of Public Law No. 22, 25 L.P.R.A. §§ 1051-1054, a statute of the Commonwealth of Puerto Rico, on the grounds that it is repugnant to the Constitution and laws of the United States. On December 14, 1977, the Supreme Court of Puerto Rico affirmed appellant's conviction

and sustained the validity of that law. The notice of appeal was filed on December 21, 1977. An amended notice of appeal was filed on January 11, 1978. On March 1, 1978, Mr. Justice William J. Brennan, Jr. issued his Order extending to and including May 13, 1978, the time to file a jurisdictional statement and/or to petition for certiorari. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1258(2) and (3). Fornaris v. Ridge Tool Co., 400 U.S. 41 at p. 42, fn. 1 (1970) (dicta), sustains this Court's appellate jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The validity of Public Law No. 22 of August 6, 1975, 25 L.P.R.A. §§ 1051-1954 and of Article V, § 4 of the Constitution of the Commonwealth of Puerto Rico are challenged herein. The operative part of Public Law 22 is set forth below:

> The Police of Puerto Rico is hereby empowered and authorized to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States; to examine cargo brought into the country, and to detain, question, and search those persons whom the Police have ground to suspect of illegally carrying

firearms, explosives, narcotics, depressants or stimulants or similar substances.

25 L.P.R.A. § 1051 (West 1975).

Article V, § 4 of the Constitution of the Commonwealth of Puerto Rico (48 U.S.C. § 731d) provides as follows:

> The Supreme Court shall sit, in accordance with rules adopted by it, as a full court or in divisions composed of not less than three Justices. No law shall be held unconstitutional except by a majority of the total number of Justices of which the Court is composed in accordance with this Constitution or with law.

The other constitutional and statutory provisions involved and the full text of Public Law No. 22 are set forth in Appendix F.

QUESTIONS PRESENTED

1. Whether Puerto Rico may constitutionally enact a law that authorizes the indiscriminate, warrantless search and seizure, without probable cause, of persons and property arriving in Puerto Rico from other parts

of the United States.

2. Whether Puerto Rico constitutionally may create a "de facto" international border between itself and other parts of the United States?

3. Whether Public Law No. 22, 25 L.P.R.A. §§ 1051-1054, unlawfully abridges the right to travel by subjecting individuals to indiscriminate, warrantless searches without probable cause upon their entry into the Commonwealth of Puerto Rico from other parts of the United States?

4. Whether Article V, § 4 of the Constitution of the Commonwealth of Puerto Rico operated to deny appellant his right to due process of law by precluding the Supreme Court of Puerto Rico from reversing appellant's conviction for possession of marihuana, even though a majority of the justices who heard the case were convinced that the conviction was obtained in violation of the Fourth Amendment to the United States Constitution?

STATEMENT OF THE CASE

On August 6, 1976, appellant arrived at Puerto Rico's Isla Verde Airport aboard Eastern Airlines' Flight 915, non-stop from Miami, and went to

the baggage claim area to pick up his luggage. The trial court found that he "looked nervous, following with his eyes the movements of Police Agent Ruben Marcano, who was fully uniformed at his station of surveillance of passengers arriving from the United States." Opinion of the Honorable Charles E. Figueroa, Judge of the Superior Court (App. C at p. 103). A second agent, Marcelino Santiago of the Division for the Search and Patrol of Ports and Airports of the Criminal Investigations Bureau of the Police of Puerto Rico, noticed that appellant appeared nervous. Agent Santiago was in plain clothes. Id.

As appellant was leaving the baggage area with his luggage, agents Santiago and Marcano approached appellant , identified themselves and presented a card describing their authority pursuant to Act No. 22 of August 6, 1975, 25 L.P.R.A. §§ 1051-1054 [hereinafter "Public Law 22"], the operative section of which provides:

> "Authorization to Inspect
>
> "The Police of Puerto Rico is hereby empowered and authorized to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States; to

> examine cargo brought into the country, and to detain, question, and search those persons whom the police have ground to suspect of illegally carrying firearms, explosives, narcotics, depressants or stimulants or similar substances."

Appellant objected to any search of his luggage and insisted on calling his uncle, an attorney in Puerto Rico. Agent Marcano told him he would be entitled to call an attorney if he had committed an offense, but made clear to him that this "was only a routine baggage seach, like that of all passengers inspected pursuant to Act No. 22 of August 6, 1975." (App. C at pp. 104-105.)

The officers searched appellant's luggage and in one of the suitcases they found a paper bag containing approximately one ounce of marihuana and a pipe containing marihuana residues. (App. C at p. 105.) Appellant was arrested and charged with a violation of Article 404 of the Controlled Substance Act of Puerto Rico. On August 31, 1976, the prosecuting attorney filed an information charging that appellant "unlawfully, willfully, maliciously, knowingly and/or intentionally, carried the controlled substance marihuana, ..." Information, August 31, 1976.1/

1/ The trial and all proceedings below were
(continued on next page)

Prior to trial, appellant moved to suppress the marihuana and pipe on the grounds that the evidence was obtained in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, of various Puerto Rico statutory and constitutional provisions and "[i]n violation of the case la.. established by the Supreme Court of Puerto Rico and by the Supreme Court of the United States of America." Motion to Suppress Evidence, Superior Court No. G 76-3105 (undated). The Court heard testimony on October 26, 1976. Appellant filed a post-hearing memorandum of authorities dated November 1, 1976, arguing the unconstitutionality of Public Law 22 under federal and Puerto Rico law.

On December 22, 1976, the Superior Court issued its Resolution and Order (Appendix C) denying the motion to suppress evidence. The court found

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1/ (footnote continued) conducted in the Spanish language. Pursuant to appellant's request, an English translation of the record in the Supreme Court of Puerto Rico was prepared and, we are advised, lodged with this Court. The pages of the translation are not numbered serially and will be referred to by description of the document and by the page number within the document as translated. The parts of the record reproduced in the appendices will be identified by their page number in the appendix. Appellant speaks Spanish.

that appellant's luggage was searched because he appeared "nervous" as he was "about to leave the baggage claim area," and that the inspection was based on Public Law 22. The Court also adopted as findings the testimony of agent Marcano as follows:

> "Agent Marcano also stated that, at the Isla Verde Airport there are warnings informing arriving passengers that their luggage may be inspected under Act No. 22 of August 6, 1975, and that there are no similar warnings in the airplanes and that he thinks, although he cannot categorically assert it, that there are no warnings regarding the effectiveness and scope of Act No. 22 of August, 1975 in the airports from where the airplanes depart on their domestic flights. That his intervention was partly due to the defendant's conduct and to the way he was dressed, but was rather based on the authority granted by Act No. 22 of August, 1975 and that the defendant was not a suspect."
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> (App. C at pp. 105-106)

Notwithstanding the "persons and effects language of the Fourth Amendment, the Court held that "the reasonable grounds [sic] requirement only has to be met when the agent intends to detain and eventually

search the passenger, not his luggage." 2 / (App. C at p. 108; emphasis added.)

The trial court held that:

> " [D]efendant's conduct, as observed by agent Marcano, and the information received from agent Santiago, do not constitute, in our judgment, the reasonable and supported grounds required of a law enforcement officer to justify, ordinarily, the arrest of a citizen in accordance with our case law, but we can consider it suspicious conduct that could justify a border search, in accordance with some cases in the federal case law."
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> (App. C at pp. 108-109)

The trial court then upheld that warrantless search without probable cause on the authority of "border" searches.

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2 / As the Court noted, the United States carries out only "sporadic inspections through the U. S. Department of Agriculture when checking for tropical fruit and plants which may be harmful to public health and agriculture." (App. C at p. 112) These inspections, however, are pre-boarding agricultural inspections for persons leaving the island.

(App. C at pp. 110-115.) The trial court recognized "a serious problem with the traffic and smuggling of narcotics, firearms and explosives on the part of individuals who travel freely between Puerto Rico and the United States" (App. C at p. 112), and that no customs or other inspection facilities are set up to inspect travelers between Puerto Rico and the United States, since Puerto Rico is part of the United States (App. C at p. 112). The court held that the border search doctrine should apply:

> [B]ecause of the peculiar condition of our island, the unrestricted ease with which American citizens travel from any point in the United States to Puerto Rico, and vice versa, the frequency with which domestic flights arrive at and depart from our airport, and also because the inspection carried out under [Public Law 22] is not covered by the federal government. 3/
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> (App. C at p. 115.)

The trial court sitting without a jury admitted the evidence, convicted appellant, and, on January 7, 1977, sentenced him to one to three years' imprisonment.

3/ Puerto Rico shares these characteristics not only with the Hawaiian Islands but with Manhattan Island as well.

Appellant's motion for bail pending appeal was granted.

On appeal to the Puerto Rico Supreme Court, appellant raised the following "errors and questions":

> a) The honorable trial court erred in not granting the motion for suppression of evidence.
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> b) The honorable trial court erred in determining that under Act No. 22 of August 6, 1975, "reasonable grounds" are not needed for an agent to stop a person.
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> c) The honorable trial court erred in not declaring unconstitutional Act No. 22 of August 6, 1975, because it contravenes the Fourth Amendment of the Constitution of the United States and Article II, Section 10 of the Constitution of the Commonwealth of Puerto Rico.
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> Appellant's Brief at pp. 3-4.

In addition to the Fourth Amendment issue, appellant also argued that Public Law 22 violated his federal constitutional right to travel emanating from Article 1, § 9 (the commerce clause) and from the privileges and immunities clause of the Fourteenth Amendment. Id., at p. 7.

On December 14, 1977, the Supreme Court of Puerto Rico issued its Judgment (App. B) and four separate opinions (App. A). Although a majority of the Justices who heard the case believed Public Law 22 to be unconstitutional, (App. B) the judgment below was affirmed on the basis of Article 5 § 4 of the Constitution of the Commonwealth of Puerto Rico (48 U.S.C. § 731d). Article 5 § 4 provides:

> The Supreme Court shall sit, in accordance with rules adopted by it, as a full court or in divisions composed of not less than three justices. No law shall be held unconstitutional except by a majority of the total number of Justices of which the Court is composed in accordance with this Constitution or with law.
>
> (Emphasis added.)

The Supreme Court of Puerto Rico is now composed of eight members. Mr. Justice Rigau did not participate in the decision. No reason was given for his failure to do so. (App. B) Although four of the seven members who actually heard the case believed that Public Law 22 violated the Fourth Amendment, appellant's conviction was upheld. In short, the court believes Public Law 22 violates the Fourth Amendment, but feels bound not to issue a judgment to that effect. The

law and appellant's conviction still stand.

Although the majority was powerless to declare Public Law 22 unconstitutional it did provide an authoritative construction of the statute. Writing for the majority, Mr. Justice Yunque first noted that the law authorized "indiscriminate" searches. (App. A at p. 3). He went on to determine that consistent with the stated "motives" of Public Law 22, the law was "directed at seeking 'firearms, explosives, narcotic substances, depressants or stimulants or similar substances'...with the purpose of instituting criminal prosecutions. . . ." (App. A at p. 13; emphasis added.) Thus the Court properly distinguished the law from administrative search cases, which in any event require a search warrant. See Camara v. Municipal Court, 387 U.S. 523 (1967).

Finally, the majority rejected the lower court's interpretation that the statute was directly solely towards "objects" or luggage.

> The searches authorized by said statute do not have the exclusive purpose of seizing objects. The facts of this case demonstrate this. Appellant was stopped, accused, tried and convicted as a result of the search of his luggage conducted pursuant to said act. The police power of the state is not synonymous to the power of the police to stop persons and search them without reasonable grounds. The latter is what Act No. 22 authorizes against the clear constitutional provisions which forbid it.
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> (App. A at p. 30; emphasis added.)

The majority of the members of Puerto Rico Supreme Court who heard the case has interpreted Public Law 22 to be exactly what it appears to be: a law purporting to allow police officers in pursuit of criminal activity to conduct "indiscriminate" warrantless searches of the "persons...papers and effects" of persons who are not even reasonably suspected of engaging in criminal activity.

The majority also held that the particular search herein was in fact "indiscriminate" and that there is "no controversy in that the detention and the search of appellant's belongings were carried out without reasonable grounds to believe that he was acting contrary to law." (App. A at p.3.)

The majority then rejected the border search argument as inapplicable because Public Law 22 "deals with the entry of persons and articles from the United States" and under such circumstances, "our borders are state borders." (App. A at p. 5.) Mr. Justice

Yunque noted that "[s]tates have not been authorized to stop all those who trespass its borders and search them without reasonable grounds to do so." (App. A at p. 6.) He rejected the view that Puerto Rico's island status makes it any different from the states for Fourth Amendment purposes, since most people travel to Puerto Rico by plane, and it is "irrelevant whether the surface flown over is island or sea ....When traveling by plane, there is no difference between going from here to Miami or from Miami to New York." (App. A at p. 21)

The majority also rejected the argument that the compact between the United States and Puerto Rico gives it the right to "consider the United States as a foreign country...."

> The special relationship between Puerto Rico and the United States, based on the existence of a compact--Public Law 600, 81st Cong., 1 L.P.R.A., Vol. 1, pp. 136-138--does not empower us to consider the United States as a foreign country and to subject all persons arriving at Puerto Rico from the United States to an indiscriminate search of their persons and their belongings, without a search warrant and without probable cause or reasonable grounds. The Commonwealth is not an associate republic. Far from

> that, it is a political condition adopted by us in Puerto Rico based on, among other fundamental principles, our union with the United States....
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> (App. A at pp. 19-20.)

Three additional opinions were filed by Justices who concurred with the affirmance of the judgment, but who believed the Act to be unconstitutional.

Mr. Justice Cruz would have found Public Law 22 constitutional as a border search. (App. A at pp. 39-50.) Mr. Justice Cruz characterized the search as an "inspection," an exception to the Fourth Amendment that would in this case swallow the entire rule. Mr. Justice Cruz further argued that Puerto Rico is a "unique entity" (App. A at p. 44), which is more vulnerable than the states to illegal smugglers. He would, therefore, create a "de facto border for 'domestic' travelers which requires as much surveillance as United States international borders." (App. A at p. 45.) Citing Miller v. California, 413 U.S. 15 (1973), he joined Mr. Justice Garcia in suggesting that the Court create a "community standards" approach to the Fourth Amendment. (App. A at pp. 46-48.) Finally, in apparent reference to the novelty of these views, Mr. Justice Cruz argued that the majority should not lock itself in the "conceptual prison of stare decisis." (App. A at p. 55.)

Mr. Justice Martin also favored a "community standards" approach to the Fourth Amendment, and stated his view that "the protection against unreasonable searches should be safeguarded but not when it affects the community." (App. A at pp. 65-67.)

Norwithstanding the fact the appellant was already off the aircraft, Mr. Justice Garcia would have upheld the search as an "airport search". (App. A at pp. 73-75.) He also argued that the search was valid as an administrative inspection (App. A at pp. 75-85). Finally, he would grant to Puerto Rico "prerogative and powers that the federal constitution denies to the states of the Union." (App. A at p. 85.) Citing the special tax arrangement granted Puerto Rico, he argued that Puerto Rico is to be distinguished from the states because the states "cannot escape the application of federal laws because they are part of the supreme law of the nation." (App. A at p. 86) This distinction, he argued, gives Puerto Rico "a power that is analogous to that of federal customs agents at the nation's borders." (App. A at p. 87.)

On December 21, 1977, appellant filed a timely Notice of Appeal and a request for a stay of mandate pending appeal to this Court. The stay was

granted on January 4, 1978.[4/] On January 11, 1978, appellant filed an Amended Notice of Appeal in conformance with Rule 10 of the Rules of this Court. Both notices of appeal raised the Fourth Amendment issues. They further argued that it was a denial of due process to uphold appellant's conviction when a majority of the members of the Puerto Rico Supreme Court who heard the case believed it to be unconstitutional. Because this issue appeared for the first time after the judgment of the Puerto Rico Supreme Court, it could not have been raised before.

In his Notice of Appeal and in a separate request dated January 12, 1978, appellant asked that the record before the Puerto Rico Supreme Court be translated and sent to this Court. On March 1, 1978, Mr. Justice William J. Brennan, Jr. extended the time to file this jurisdictional statement to and including May 13, 1978, because the record had not yet been translated. On April 5, 1978, the Clerk of the Supreme Court of Puerto Rico forwarded a copy of the translated record to counsel.

4/ The translation of the Resolution dated January 4, 1978, incorrectly omitted the Court's order by translating the words "it is so granted" as "the Court provides as follows." Since the parties do not contest his status, appellant has not asked for a correction.

On April 14, 1978, appellant filed an untimely motion for reconsideration in the Supreme Court of Puerto Rico. The motion alleged that an opera star had recently been searched pursuant to Public Law 22, that the search had generated much publicity and that a newspaper reported that Mr. Justice Rigau had stated that he is now prepared to vote on the constitutionality of Public Law 22. The motion asked that the Court allow Mr. Justice Rigau to vote and that it reconsider its interpretation of Article 5 § 4 of the Puerto Rico Constitution. On May 4, 1978, the motion was denied.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

This case presents substantial federal questions with profound implications for the relationship between the United States and the Commonwealth of Puerto Rico and for Fourth Amendment jurisprudence.

A. Public Law No. 22 unconstitutionally authorizes the "indiscriminate" warrantless search and seizure of persons and property entering Puerto Rico from other parts of the United States.

Public Law 22 provides blanket authorization for police to "inspect the luggage, packages, bundles, and

bags of passengers" entering Puerto Rico from the United States. It further empowers police to "detain, question and search those persons whom the police have ground to suspect of illegally carrying firearms, explosives, narcotic substances . . . stimulants or similar substances." 5/

The Supreme Court of Puerto Rico has left no doubt that Public Law 22 authorizes "indiscriminate" warrantless searches, "without reasonable grounds", of persons as well as property, for the purpose of instituting criminal prosecutions". (App. A at pp. 3, 22, 13.)

5/ The "ground to suspect" which permits detention of individuals does not rise to the level of probable cause. It is not even the reasonable suspicion justifying a stop under Sibron v. New York, 392 U.S. 40 (1968). That suspicion must consist of "specific and articulable facts which,... 'warrant a man of reasonable caution in the belief' that the action taken [is] appropriate." Terry v. Ohio, 392 U.S. 1, 21-22 (1968). Public Law 22 requires no such articulable facts, nor are they present here. And most importantly, the stop and frisk cases would have limited the police to routine questions and possibly a "pat down" search. The luggage search here would be wholly impermissible.

The foregoing construction[6/] unmistakably demonstrates the conflict between Public Law 22 and the Fourth Amendment.

This Court has consistently condemned warrantless searches and seizures. Chimel v. California, 395 U.S. 752, 762 (1969); Camara v. Municipal Court, 387 U.S. 523, 528-28 (1967). The prohibition of warrantless searches is subject to but a few "jealously and carefully drawn" exceptions. Jones v. United States, 357 U.S. 493, 499 (1958). Those exceptions fall into three general categories: certain searches conducted where speed is essential and obtaining a warrant is impracticable, consent searches, and a very limited class of routine searches. See Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L.Rev. 349, 358-60 (1974).

No one has suggested that the police had no time in this case to obtain a search warrant. United States v. Chadwick, ___ U.S. ___, 97 S.Ct. 2476 (1977). Similarly, no one has argued, nor do the facts support a finding, that appellant voluntarily

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6/ This Court has held that "a Puerto Rican court should not be overruled on its construction of local law unless it could be said to be 'inescapably wrong.'" Fornaris v. Ridge Tool Co., 400 U.S. 41, 43 (1970)(per curiam), citing Bonet v. Texas, 308 U.S. 463 (1940).

consented to a search. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). See, United States v. Robson, 477 F.2d 13 (9th Cir. 1973).

The class of routine searches permitted without a warrant is extremely limited. This court has allowed searches of persons and objects entering the United States across an international border, Almeida-Sanchez v. United States, 413 U.S. 266 (1973); searches of certain premises licensed for sale of firearms and liquor, United States v Biswell, 406 U.S. 311 (1972); and inventory searches of vehicles properly taken into police custody. South Dakota v. Opperman, 428 U.S. 364 (1976).

Since the search authorized by Public Law 22 is so clearly unconstitutional under any present theory, the minority justices below turned to the border search doctrine to justify its continued validity. (App. A at pp. 45, 75-85). We agree that the search permitted by the statute is so broad and inclusive and so subject to the whim of the police officer that it can only be equated to a border search. The problem, however, is that there is no border. As the United States District Court for the District of Puerto Rico has succinctly stated in a related context, "[t]he basic requirement for a Customs' border search is a border." United States v. Ferrone, 413 F.Supp. 408, 409 (1975); see, Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

Determination of the status of Puerto Rico is a continuing hotly debated issue within the Commonwealth. That determination, however, is for the people of Puerto Rico and the Congress of the United States. Puerto Rico's status cannot be decided by the courts on an ad hoc basis. For the present Puerto Rico is entitled to no more--and probably no less--autonomy than the states, since "the purposes of Congress in the 1950 and 1952 [enabling] legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with states of the Union . . . ." Examining Board v. Flores de Otero, 426 U.S. 572, 584 (1976); see, Calero-Toledo v. Pearson Yacht Co., 416 U.S. 663, 669-76 (1974).

By affirming the judgment below this Court would effectively adopt Mr. Justice Cruz's position that the courts may create a "de facto border for 'domestic' matters which requires as much surveillance as United States international borders." (App. A at p. 45.) That, in principle, is no difference from allowing the New York police to pick and choose whom they will search on a whim at the city's airports, docks, bus stations and bridges. Indeed every state, city and town in this country has some claim to uniqueness and may be expected to claim its own right to conduct "border searches." The issue is indeed substantial.

B. The Provision of the Puerto Rico Constitution Requiring a Majority Vote of the Total Number of Justices of the Puerto Rico Supreme Court Before a Statute May Be Declared Invalid is Unconstitutional as Applied in This Case.

Article V, Section 4 of the Constitution of Puerto Rico provides that

> [n]o law shall be held unconstitutional except by a majority of the total number of Justices of which the Court is composed in accordance with this Constitution or with law.

On its face, the provision is neither unconstitutional nor even unusual. However, in the instant case, the provision was applied in a criminal proceeding in which one of the eight justices was absent and four of the remaining seven were of the opinion that the conviction was obtained pursuant to an unconstitutional statute. Application of the majority rule provision in the only appellate procedure available to appellant violates the due process clause of the United States Constitution.7/

7/ This Court has determined that federal principles of due process govern proceedings in the courts of Puerto Rico. However, it has not yet determined whether it is the Fifth or the Fourteenth Amendment which makes

(continued on next page)

It is well settled that once a state or territory grants a right of appeal to criminal defendants, federal due process requirements govern the appellate procedure. Douglas v. California, 372 U.S. 353, reh. denied, 373 U.S. 905 (1963). See Ross v. Moffitt, 417 U.S. 600 (1974).

Puerto Rico law provides for appeal from a criminal conviction. In exercising that right of appeal appellant could not be denied a transcript of the trial court proceedings because of an inability to pay. Griffin v. Illinois, 351 U.S. 12 (1956) Nor could he be denied the right to counsel on appeal, Douglas v. California, 372 U.S. 353 (1963), nor made to pay a filing fee. Burns v. Ohio, 360 U.S. 252 (1959). Yet if this application of Article V, Section 4 is allowed to stand the appellant will have been convicted pursuant to a law which a majority of the Justices sitting were convinced is unconstitutional. When the outcome of a criminal case depends not on a principled application of the requirements of the Fourth Amendment but on the chance mathematics of the number of Justices available to hear

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7/ (footnote continued) those principles applicable. Examining Board v. Flores de Otero, 426 U.S. 572, 601 (1976). But see, Justice Rehnquist's partial dissent 426 U.S. 572, 606-09.

the case, a criminal defendant has been denied due process of law, and his conviction should be reversed.

Ohio ex rel Bryant v. Akron Metropolitan Park District, 281 U.S. 74 (1930) does not compel a different result. That case upheld a provision of the Ohio Constitution which prevented the Ohio Supreme Court from declaring a statute unconstitutional unless all but one of the judges agreed or unless the decision affirmed a similar judgment by a state court of appeals.

Unlike the instant case, Ohio ex rel Bryant involved a civil suit. The Court disposed of the due process issue in a single paragraph, emphasizing that plaintiffs had been afforded ample opportunity "to contest all constitutional and other questions fully in the common pleas court and again in the court of appeals...." 281 U.S. at 80. Appellant was provided no such opportunity here. In the nearly fifty years since Ohio ex rel Bryant the concept of due process has changed so dramatically that the principles on which the Court relied in that case are no longer applicable. In that period of time, for example, criminal defendants in state courts have been guaranteed the right to trial by jury, Duncan v. Louisiana, 391 U.S. 145 (1968); to be free of compelled self-incrimination; Malloy v. Hogan, 378 U.S. 1 (1964); to a speedy and public trial, Klopfer v. North Carolina, 386 U.S.

213 (1967) and In re Oliver, 333 U.S. 257 (1948); to the protection of the exclusionary rule against evidence illegally obtained, Mapp v. Ohio, 367 U.S. 643 (1961); and to the assistance of counsel, Gideon v. Wainwright, 372 U.S. 335 (1963).

Appellant was denied his right to due process of law. The federal question is substantial.

C. The Appropriateness of Plenary Consideration.

Appellant believes that the Fourth Amendment violation is clear and that the opinion--but not the judgment--of the majority below is correct. It should also be clear that notwithstanding Article V, § 4, the Puerto Rico Supreme Court can and will enter a judgment that Public Law 22 is unconstitutional if this Court vacates and remands. We therefore do not believe that plenary consideration is necessary. Since the majority below agrees the statute is unconstitutional, an order of this Court summarily vacating and remanding would hardly be precipitous.

In the event the Court does not decide to summarily reverse,the case should be set for plenary consideration. Affirming the judgment or dismissing the appeal will have enormous impact on Fourth Amendment law, on relations between Puerto Rico and the

United States and on the physical integrity of the hundreds of thousands of persons who use the airports of Puerto Rico. At a minimum, plenary consideration is required.

If this Court does not wish to consider the Fourth Amendment issue, it may nonetheless vacate and remand on the due process issue and we urge it to do so. Plenary consideration may be appropriate, however, since Article V, § 4 of the Puerto Rico Constitution effectively insulates local laws from federal constitutional attack and since the Court has not considered a similar question since Ohio ex rel Bryant v. Akron Metropolitan Park District, 281 U.S. 74 (1930).

CONCLUSION

For the aforementioned reasons this Court should note probable jurisdiction and either vacate the opinion below and remand for reversal of appellant's conviction or set the case for plenary consideration of the substantial federal questions.

Respectfully submitted,

JOSEPH REMCHO
ROBIN B. JOHANSEN
ROSEN, REMCHO & HENDERSON
155 Montgomery Street, # 1502
San Francisco, California 94104
Telephone: (415) 433-6830

CELEDONIO MEDIN LOZADA HERNANDEZ
CELEDONIO MEDIN LOZADA GENTILE
Calle Leon #133--Apartado 1034
Mayaguez, Puerto Rico 00708
Telephone: (809) 832-4266

Attorneys for Appellant

APPENDIX A

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico,	Judgment of the Superior Court,
Plaintiff and appellee	San Juan Part, Charles E.
v.	Figueroa, Judge
Terry Terrol Torres Lozada,	No. Cr-77-24
Defendant and appellant	Article 404, Controlled Substances Act

Opinion delivered by MR. JUSTICE IRIZARRY YUNQUE, with whom MR. CHIEF JUSTICE TRIAS MONGE, MR. JUSTICE DAVILA, and MR. JUSTICE TORRES RIGUAL join.

San Juan, Puerto Rico, December 14, 1977

On August 6, 1976, appellant landed at Isla Verde International Airport on a commercial flight from Miami, Florida. Once he picked up his suitcases and was ready to leave the baggage claim area, two agents from the Puerto Rico Police Department approached him, identified themselves and presented an informative card on Act No. 22 of August 6, 1975, whose sec. 1, 25 L.P.R.A. § 1051 provides:

"Authorization to Inspect

"The Police of Puerto Rico is hereby empowered and authorized to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States; to examine cargo brought into the country, and to detain, question, and search those persons whom the police have ground to suspect of illegally carrying firearms, explosives, narcotics, depressants or stimulants or similar substances."

The agents asked appellant to accompany them with his luggage to the Criminal Investigations Bureau's offices at the air terminal. There they practiced a "routine checkup" of his luggage, and in one of the suitcases they found and seized a paper bag containing cut marihuana and a pipe containing residues of said substance. He was arrested, accused, and convicted of a violation of art. 404 of the Controlled Substances Act, 24 L.P.R.A. § 2404.

At the trial court appellant unsuccessfully alleged that the substance and pipe seized were not admissible because they were the product of an unreasonable search and that the Act cited is repugnant to the Fourth Amendment of the Federal Constitution and to Sec. 10 of Art. II of the Constitution of the Commonwealth of Puerto Rico. Appellant was convicted and sentenced to serve from 1 to 3 years in prison; feeling aggrieved he raised the foregoing allegations before this Court. There

is no controversy in that the detention and the search of appellant's belongings were carried out without reasonable grounds to believe that he was acting contrary to law. Under such circumstances the search was illegal and the evidence seized inadmissible in the criminal prosecution brought against him. As to the provision allowing indiscriminate searches such as the one carried out, we deem that it is unconstitutional.

The trial court sustained the legality of appellant's search on the doctrine of border searches adopted by the Supreme Court of the United States. Said doctrine cannot be accepted as an authority to justify a search as the one under our consideration carried out in open violation of the Fourth Amendment of the Constitution of the United States and of Art. II, Sec. 10 of the Constitution of the Commonwealth of Puerto Rico.

The federal doctrine that permits border searches, which by the way, has not been exempt from criticism,[1] obviates the

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[1] See Border Searches and the Fourth Amendment, commentary in 77 Yale L.J. 1007 (1967-68), Search and Seizure at the Border--The Border Search, 21 Rutgers L. Rev. 513 (1967) and Intrusive Border Searches--Is Judicial Control Desirable?, 115 U. Pa. L. Rev. 276 (1966).

reasonability requirement of the Fourth Amendment on the grounds that no person traveling to the United States from a foreign country has a right to enter the country without identifying himself or allowing inspection of his belongings. To that effect, Almeida-Sánchez v. United States, 413 U.S. 266, 262 (1972) states:

> "It is undoubtedly within the power of the Federal Government to exclude aliens from the country. Chae Chan Ping v. United States, 130 U.S. 581, 603-604. It is also without doubt that this power can be effectuated by routine inspections and searches of individuals or conveyances seeking to cross our borders. As the court stated in Carroll v. United States: 'Travelers may be so stopped in crossing an international boundary because of national self protection reasonably requiring one entering the country to identify himself as entitled to come in and his belongings as effects which may be lawfully brought in.'" 267 U.S. at 154. See also Boyd v. United States, 116 U.S. 616.

The entry into Puerto Rico of people from foreign countries is regulated by federal custom and immigration statutes.[2]

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[2] Immigration and Nationality Act, 8 U.S.C. § 1101-1503.

To those effects, our borders are borders of the United States.[3] On the other hand, when the question under consideration deals with the entry of persons and articles from the United States, our borders are state borders. Once in the United States, any person has a right to travel from one end to the other and across state borders without being bothered (free passage without interrupation, according to Carroll v. United States, 267 U.S. 132, 154, 45 S.Ct. 280, 69 L.Ed. 543 (1925)). It is a right which has been granted constitutional rank and cannot be unreasonably affected by local regulations. Shapiro v. Thompson, 394 U.S. 618 (1969); United States v.

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[3] 8 U.S.C. § 1101(36), (38), which define "State" and "United States" as follows:

> "(36) The term 'State' includes (except as used in section 1421(a) of this title) the District of Columbia, Puerto Rico, Guam, and the Birgin Islands of the United States."

> "(38) The term 'United States', except as otherwise specifically herein provided, when used in geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States. For the purpose of issuing certificates of citizenship to persons who are citizens of the United States, the term 'United States' as used in section 1452 of this title includes the Canal Zone."

Guest, 383 U.S. 745 (1966). States have not been authorized to stop all those who trespass its borders and search them without reasonable grounds to do so. Said exception to the Fourth Amendment has not been established.[4]

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[4]For the purposes of the probable cause requirement to carry out a search, this distinction between persons entering the United States and those moving within the United States is also embodied in the Federal Plant Pest Act, 71 Stat. 31-34, 7 U.S.C. § 150aa-150-gg, to wit:

"Sec. 150aa. Definitions

"(e) 'United States' means any of the States, Territories or Districts (including possessions and the District of Columbia) of the United States.

"(f) 'Interstate' means from one State, Territory or District (including possessions and the District of Columbia) of the United States into or through any other such State, Territory or District."

Sec. 150ff. Inspections and seizures, warrants

"Any properly identified employee of the Department of Agriculture shall have authority to stop and inspect, without a warrant, any persons or means of conveyance moving into the United States, and any plant pests and any products and articles of any

In fact, in Almeida-Sánchez, supra, the conviction of a Mexican citizen who crossed the border of the United States and who carried a great quantity of marihuana in his vehicle in violation of 21 U.S.C. § 176a (1964 ed.) was reversed because the search of the vehicle was not carried out at the border. The search was effected 20 miles from the border by a federal border patrol under sec. 287(a)(3) of the Immigration and Nationality Act, 66 Stat. 233, 8 U.S.C. § 1357(a)(3), which authorizes the search of automobiles and other means of transportation "within a

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footnote 4 continued

character whatsoever carried thereby, to determine whether such persons or means of conveyance are carrying any plant pests contrary to this chapter and whether any such means of conveyance, products or articles are infested or infected by or contain any plant pest or are moving in violation of any such regulation under this chapter; to stop and inspect, without a warrant, any persons or means of conveyance moving interstate, and any plant pests and any products or articles of any character whatsoever carried thereby upon probable cause to believe that such means of conveyance, products, or articles are infested or infected by or contain any plant pest or are moving subject to any regulations under this chapter, or that such persons or means of conveyance are carrying any plant pest subject to this chapter . . ."

reasonable distance from any outside border of the United States," according to regulations to be promulgated by the Attorney General. The regulation thus adopted, 6 C.F.R. § 287.1, defines "reasonable distance" as "within 100 air miles from any external boundary of the United States." The court said at pages 272-273:

> "Whatever the permissible scope of intrusiveness of a routine border search might be, searches of this kind may in certain circumstances take place not only at the border itself, but at its functional equivalents as well. For example, searches at an established station near the border, at a point marking the confluence of two or more roads that extend from the border, might be functional equivalents of border searches. For another example, a search of the passengers and cargo of an airplane arriving at a St. Louis airport after a nonstop flight from Mexico City would clearly be the functional equivalent of a border search.
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> "But the search of the petitioner's automobile by a roving patrol, on a California road that lies at all points at least 20 miles north of the Mexican border, was of a wholly different sort. In the absence of probable cause or consent, that search violated the petitioner's Fourth Amendment right to be free of 'unreasonable searches and seizures.' "

In United States v. Schafer, 461 F.2d 856 (9th Cir. 1972) we do not find the precedent to sustain the validity of an interstate search nor that of a statute as the one under our consideration. The Act cited in Schafer is a federal law. Said Act authorizes the Secretary of Agriculture to quarantine any state or territory if he determines that such quarantine is necessary to prevent the spread of a dangerous plant disease or insect infestation and in said case to put up notices to inform the public of said quarantine. 7 U.S.C. § 161.

Once a quarantine is ordered and reported, the law clearly authorizes any properly identified employee of the Department of Agriculture designated by the Secretary of Agriculture to enforce the provisions of the law, upon having probable cause to believe that any person, vehicle or vessel, coming from a foreign country or moving interstate carries plants or products prohibited by said law or by a quarantine, to stop the person without a search warrant and to seize and destroy said plants and products, 7 U.S.C. § 164a.[5] Said law does not authorize the

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[5] The complete text reads as follows:

> "Any employee of the Department of Agriculture, authorized by the Secretary of Agriculture to enforce the provisions of this chapter and furnished with and wearing a suitable badge for identification, who has probable cause to believe that any person coming into the United States, or any vehicle, re-

frivolous search of persons.

Under the aforementioned Act, the Secretary of Agriculture quarantined the State of Hawaii. When Mrs. Schafer was about to board a plane in Hawaii headed for the mainland, a federal Agriculture employee--a quarantine inspector--found a grasslike substance in her bag which seemed to be marihuana; he called a local policeman who identified the substance as marihuana and arrested Mrs. Schafer. After conducting a more thorough search some LSD tablets were found in her bag and in her

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footnote 5 continued

"ceptacle, boat, ship, or vessel, coming from any country or countries or moving interstate, possesses, carries, or contains any nursery stock, plants, plant products, or other articles the entry or movement of which in interstate or foreign commerce is prohibited or restricted by the provisions of this chapter, or by any quarantine or order of the Secretary of Agriculture issued or promulgated pursuant thereto, shall have power to stop and, without warrant, to inspect, search, and examine such person, vehicle, receptacle, boat, ship, or vessel, and to seize, destroy, or otherwise dispose of, such nursery stock, plants, plant products, or other articles found to be moving or to have been moved in interstate commerce or to have been brought into the United States in violation of this chapter or of such quarantine or order." (Underscore supplied).

suitcase.

The Ninth Circuit upheld Mrs. Schafer's conviction for violating the federal drug act--21 U.S.C. § 360a(c)(1)--but was careful to mention that the search there was not a "criminal" search but an "administrative search." The Court cited Frank v. Maryland, 359 U.S. 360, 383 (1959) where it read: "The test of 'probable cause' required by the Fourth Amendment can take into account the nature of the search that is being sought." And it continued saying: "The Court in Camara[6] read this language to mean that a 'criminal' standard of probable cause would not be imposed on administrative inspections." 461 F.2d at 858.

Further on--461 F.2d 859--the Court said:

". . . Moreover, the decision to inspect is not 'subject to the discretion of the official in the field.' 387 U.S. at 532, 87 S. Ct. at 1733. In view of the fact that a quarantine inspection is not a search 'which has as its design the securing of information . . . which may be used to effect a

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[6] It refers to Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed. 2d 930 (1967).

> further deprivation of life, liberty or property,' [citing from Frank v. Maryland] and the fact that 'it is doubtful that any other canvassing technique would achieve acceptable resulted,' [citing Camara,] we think that the general administrative determination of the necessity for these baggage searches at the Honolulu airport satisfies the 'probable cause' requirements of Camara."

As we have seen, the federal Supreme Court has established distinction between administrative searches or inspections and those carried out with the purpose of detecting the commission of crimes, which are called "criminal" searches. The requirement of probable cause for the latter is fundamental to surmount the Fourth Amendment prohibition. Camara v. Municipal Court, 387 U.S. 523 (1967) and See v. City of Seattle, 387 U.S. 541 (1967). Check Riester & McMillen, Administrative Inspection Procedures Under the Fourth Amendment--Administrative Probable Cause, 32 Albany L. Rev. 155, 171-172 (1967); The Law of Administrative Inspections: Are Camara and See Still Alive and Well?, 1972 Wash.U.L.Q. 313, 322 (1972); Rothstein & Rothstein, Administrative Searches and Seizures: What Happened to Camara and See?, 50 Wash. L. Rev. 341, 345, 356 (1975).

The instant case and Schafer are different in that: the law invoked in Schafer to justify the search was a federal law, applicable to all the states, to the Commonwealth of Puerto Rico, to territories and possessions and to the District of Columbia, while the search carried out here finds support in a local law which applies only to Puerto Rico; the search in Schafer responded to an administrative purpose, while here it was directed at seeking "firearms, explosives, narcotic substances, depressants or stimulants or similar substances," mentioned in section 1 of Act No. 22 with the purpose of instituting criminal prosecutions; and, Mrs. Schafer, warned by the decree of the Secretary of Agriculture, should have known when leaving Hawaii that there was a quarantine and that she would be subject to a search by federal Agriculture officials, while in the instant case, appellant arrived at Puerto Rico from the State of Florida and had no reason to anticipate that he would be searched here.

By analogy, one could point out that the reasonability of searching individuals before boarding a plane has been sustained as part of the precautions against hijacking based on that said persons may decide not to board the plane. This trend is elaborated in United States v. Davis, 482 F.2d 893 (1973): "In sum, airport screening searches of the persons and immediate possessions of potential

passengers for weapons and explosives are reasonable under the Fourth Amendment provided each prospective boarder retains the right to leave rather than submit to the search". United States v. Davis, supra, at 912. See also United States v. Miner, 484 F.2d 1075, 1076 (1973), and United States v. Homburg, 546 F.2d 1350, 1352 (1976).

It should be noted that regardless of the present need for searches of passengers to prevent hijacking, one generally presupposes that there was consent, whether express or implied, on the part of the passenger and the constitutional objection is obviated. United States v. Bell, 464 F.2d 667, 675 (1972), cited in United States v. Skipwith, 482 F.2d 1272, 1276 (1973). The situation under which the search to prevent hijacking is carried out is different from that contemplated in Act No. 22. Searches to prevent hijacking are conducted at the one and only opportunity available to avoid the disaster which can cause the loss of hundreds of lives if the armed hijacker enters the plane. That is why they have sometimes been compared to border searches. The assumption that the passenger has consented based on his right to decide between allowing the search or deciding against boarding the plane has not been exempt from criticism in spite of the reasonability of the search. United States v. Albarado, 495 F.2d 799, 806-807 (1974); United States v. Kroll,

481 F.2d 884, 886 (1973); Airport Security Searches and the Fourth Amendment, 71 Colum. L. Rev. 1039, 1048-1049 (1971).

The functional equivalent of a border mentioned in Almeida-Sánchez, supra, at 22-273, was recently discussed in United States v. Mirmelli, 421 F.Supp. 684 (D. C. New Jersey 1976) (certiorari pending consideration before the Supreme Court of the United States). Said concept has been broadened to include not only those airports in the interior of the United States to which nonstop flights from outside of the United States arrive, but also those airports in which there are facilities for customs and immigration inspections.

In spite of the fact that said case dealt with a functional equivalent of a border, as we have seen, the validity of the search conducted in that case was sustained on the existence of probable cause. A passenger airplane from Florida landed at Teterboro Airport, New Jersey. Instead of passengers a large number of cartons were unloaded from the plane and were rapidly carried by the plane crew to a van with New York registration.

Although the information obtained by customs inspectors indicated that the cartons contained ceramics, they were transported from the plane to the van in a rough and inappropriate way for such merchandise. On the other hand,

the van's rental agreement indicated musical instruments were being transported. In view of such facts, customs inspectors consulted their superior and after being authorized by him they proceeded to ask that one of the cartons be opened and found marihuana inside. The circumstances of the instant case are very different from those present in the aforementioned case.

We realize that our government has made an effort to prevent the entry into our Island of narcotic drugs, firearms, and explosives, at a moment in our history in which the rise in its illegal traffic maintains people in a state of constant worry and anxiety. Nevertheless, the reasonability required by our Bill of Rights and by the Fourth Amendment to allow searches cannot be made dependent on the historical situation. We again cite Almeida Sánchez, supra, at 274-275:

> "The Court that decided Carroll v. United States, supra,[7] sat during a period of our history when the Nation was confronted with a law enforcement problem of no small magnitude--the enforcement of the Prohibition laws. But that Court resisted the pressure of officials expedience against the guarantee of the Fourth Amendment. Mr. Chief Justice Taft's opinion for the Court distinguished between searches at the border and

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[7] 267 U.S. 132 (1925).

> in the interior, and clearly controls the case at bar:
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> "' It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travellers may be so stopped in crossing an international boundary because of national self protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise.' 267 U.S., at 153-154."

Justice Frankfurter made the following warning in his dissent in Harris v. United States, 331 U.S. 145, 160-161; 67 Sup. Ct. 1098; 91 L.Ed.

1399, 1411 (1946):[8]

> ". . . If one thing on this subject can be said with confidence it is that the protection afforded by the Fourth Amendment against search and seizure by the police, except under the closest judicial safeguards, is not an outworn bit of Eighteenth Century romantic rationalism but an indispensable need for a democratic society."

Justice Brandeis, cited by Justice Frankfurter in the dissenting opinion mentioned, stated that the framers of the Constitution ". . . conferred, as against the Government, the right to be let alone--the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." Olmstead v. United States, dissenting opinion, 277 U.S. 438, 478 (1927); 72 L.Ed. 944, 956.[9]

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[8] The dissent eventually became the Supreme Court's position upon reversing Harris. Chimel v. California, 395 U.S. 752 (1969).

[9] Later in Katz v. United States, 389 U.S. 352 (1967) Olmstead was reversed and the dissent became the ruling.

The Fourth Amendment had its origin in the violent reaction on the part of the North American people towards the so-called "writs of assistance" of the colonial era, by virtue of which homes of citizens were searched indiscriminately. Their importance has prevailed in the words of John Adams upon commenting on the famous speech by James Otis, Attorney General, of the Massachusetts Bay Colony, when the latter resigned to his position in protest of the abuse of said search warrants. Otis' speech ignited the spirit of the settlers to rebel against said warrants. Referring to said speech Adams wrote: "American independence was then and there born." 10 Adams, Works 247.[10] See Blackford v. United States, 247 F.2d 745, 748 (9th Cir. 1957).

That is the genesis of the provision of our Bill of Rights which protects people from the abuse of unreasonable searches. Upon defending the guarantee recognized by our Constitution as well as those of the States of the Union we cannot be less demanding than the highest Federal Court.

The special relationship between Puerto Rico and the United States,

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[10] [Translator's Note: This footnote consists of the English text of Adam's famous phrase copied above in the text of the opinion and translated into Spanish in the original.]

based on the existence of a compact--Public Law 600, 81st Cong., 1 L.P.R.A., Vol. 1, pp. 136-138--does not empower us to consider the United States as a foreign country and to subject all persons arriving at Puerto Rico from the United States to an indiscriminate search of their persons and their belongings, without a search warrant and without probable cause or reasonable grounds. The Commonwealth is not an associated republic. Far from that, it is a political condition adopted by us in Puerto Rico based on, among other fundamental principles, our union with the United States, and on that the common citizenship "and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges" are determining factors in our life. Preamble of the Constitution of the Commonwealth of Puerto Rico.

Our geographic condition as an island does not justify making our case an exception to the Fourth Amendment. Neither will anyone argue that said exception would prove ineffective for Hawaii and Alaska due to the fact that they are not territories connected to the 48 continental states lying to the south of Canada and to the north of Mexico. Hawaii is an archipelago more distant from the continent than Puerto Rico. Alaska is peculiar in that it is geographically separate from the other states and has a border with another country.

Puerto Rico has no boundaries with other countries.

Besides, although we are an island, our seaports are not the major entries and exits to those traveling between Puerto Rico and the continent. Most people traveling to and from here do so by plane. When traveling by plane, it is irrelevant whether the surface flown over is land or sea. Thus the distinction that could be made regarding our condition as an island is unimportant. We are an island with regard to travel by sea. When traveling by plane there is no difference between going from here to Miami or from Miama to New York.

Finally, supposing that the Fourth Amendment were not applicable to Puerto Rico to the effects of Act No. 22 discussed here, we cannot disregard the fact that this prohibition would subsist under the Constitution of the Commonwealth which sets as a limit to the police action, apart from the specific prohibition against unreasonable searches, the principle of inviolability of human dignity. Constitutional guarantees were not adopted for a particular time and place. These principles are tested precisely when there is a rise in a certain type of crime and collective hysteria swells, and the courts of justice are the ones called upon to enforce them as essential values of the democratic order that we enjoy.

When these principles are enervated the monster of arbitrariness and despotism will come forth. The Constitution is a Supreme Law adopted directly by the supreme legislator--the People. It does not authorize departure from its provisions nor does it authorize any action against its prohibitions. The constitutional provisions which guarantee the enjoyment of freedom cannot be enervated when public order is undermined at a given moment. To make an exception due to a particular situation would destroy the democratic system forever.

The second half of section 1 of Act No. 22 (1975), provides that "in order to detain, question, and search persons" arriving from the United States, the Police must have grounds "to suspect [they illegally carry] firearms, explosives, depressants or stimulants or similar substances." Nevertheless, the first half of said section 1 empowers and authorizes the Police of Puerto Rico "to inspect the luggage, packages, bundles, and bags" of said persons without requiring reasonable grounds. In other words, it authorizes the Police to search the baggage, packages, bundles and bags of passengers indiscriminately. We do not see how this can be done without stopping the person. In fact, appellant was stopped when asked to accompany the agents with his luggage to the Criminal Investigations Bureau's office at the airport, without there

being reasonable grounds to believe he was violating the law. Appellant had no alternative in view of said request.

Neither the Fourth Amendment of the Federal Constitution nor Art. II, Sec. 10 of ours distinguish the search of persons from the search of their belongings with regard to the reasonability requirement. The Fourth amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

And Sec. 10 of Art. II of our Constitution provides:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.
>
> "Wire-tapping is prohibited.
>
> "No warrant for arrest or search and seizure shall issue except by judicial authority and only upon probable cause supported

> by oath or affirmation, and particularly describing the place to be searched and the persons to be arrested or the things to be seized.
>
> "Evidence obtained in violation of this section shall be inadmissible in the courts."

In view of such clear constitutional provisions we must conclude that the searches authorized by Act No. 22 are prohibited. A law, no matter how commendable its purposes might be, cannot authorize what the Constitution prohibits.

If the aforesaid Act were construed as though it authorized the detention and the search of persons as well as the search of their belongings only when there existed reasonable grounds which would surmount the probable cause requirement, then we would have to conclude that the passage of said Act by the Legislature constituted a futile and inconsequential action, for it was tantamount to repeating what had already been established in Puerto Rico through case law and legislation. Under Rule 231 of the Rules of Criminal Procedure[11] a search by a peace officer

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[11] "Rule 231. Search Warrant; Requisites for Issuance; Form and Contents

A search warrant shall not be issued except upon a written statement, made before

is allowed only through a warrant issued by a magistrate in the face of a written and sworn statement, after he is convinced that there is probable cause or without a warrant, when the search is incidental to a valid arrest. People v. Torres Resto, 102 D.P.R. 532 (1974); Rolón v. Superior Court, 96 P.R.R. 448 (1968); People v. Riscard, 95 P.R.R. 394 (1967). We must point out that in the second situation--search incidental to a valid arrest--the requirement of reasonability is always present, since

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footnote 11 continued:

> a magistrate under oath or affirmation, which shall set forth the facts tending to establish the grounds for the issuance. If from the affidavit and the examination of the affiant, the magistrate is satisfied that there is probable cause for the search, he shall issue the warrant, naming or describing particularly the person or place to be searched and the things or property to be seized. The warrant shall state the grounds for its issuance and the names of the persons on whose affidavits the warrant is based. It shall order the officer to whom it is directed to forthwith search the person or place named for the property specified, and to make a return of the service of the warrant to the magistrate, together with the property seized. The warrant shall direct that it be served in the daytime, but the magistrate, by reason of necessity and urgency, may direct that it be served at any time of the day or night."

the existence per se of a lawful arrest does not validate ipso facto a search or a seizure without warrant. People v. Dolce, decided on December 13, 1976, Ref. Col. Abog. (Advanced Sheet Bar Association) 1976-115; People v. Costoso Caballero, 100 P.R.R. 146 (1971); People v. Polanco Marcial, 95 P.R.R. 457 (1967); People v. Sosa Díaz, 90 P.R.R. 606 (1964).

Another opinion delivered in this case defends the constitutional validity of Act No. 22 under a theory which states that searches herein authorized may be considered part of the power of the Commonwealth to adopt inspection laws as part of its regulatory power called police power or state police power.[12]

We are not discussing the power of the State and of the Commonwealth to adopt general inspection laws under the police power. We must understand, nevertheless, that the purpose of said laws is to authorize administrative inspections and not those with criminal purposes. None of the authorities cited: Gibbons v. Ogden, 9 Wheaton 1, 6 L.Ed. 23 (11824), Brown v. Maryland,

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[12][Translator's Note: After making reference in the text of the opinion to the so-called "poder policial" or "poder de policia del Estado" in footnote 12, Mr. Justice Irizarry Yunqué merely gives the English equivalent for said terms, to wit: police power].

12 Wheaton 419, 6 L.Ed. 678 (1827); Mayor of New York City v. Miln, 11 Peters 102, 9 L.Ed. 648 (1837), Patapsco Guano Co. v. Board of Agriculture, 171 U.S. 345 (1898), Compagnie Francaise v. State Board of Health, Louisiana, 186 U.S. 380 (1902)--upon which said opinion is based--involve statutes authorizing the inspection of objects or persons directed to obtain evidence on criminal activity or to prevent it, as is the case of Act No. 22.

Gibbons deals with a state law authorizing monopoly in the operation of steamships which constitutionally contravened a federal law which granted licenses for operating ships. Brown v. Maryland referred to a state law requiring that everyone who sold imported goods obtain a state license before selling the objects. Mayor of the City of New York deal with a law requiring all passenger ship masters from other states of the Union or foreign countries entering the New York harbor to submit a written report on the name, place of birth, and last residence, age and occupation of every one of the ship's passengers, whether a foreigner or an American citizen (except for New York) and of every passenger who had left the ship or gotten aboard during the trip with the purpose of going to New York. Patapsco Guano Co. dealt with a state law allowing for the inspection of fetilizers, whether produced in this state or another, with the purpose of protecting citizens from fraud.

Compagnie Francaise referred to a state law for quarantine which, among other things, forbade healthy persons from entering quarantined communities.

In California v. Thompson, 313 U.S. 109 (1941), state power to adopt inspection laws is reaffirmed but the purpose of this is not thought to be the discovery of criminal evidence but rather the protection of the people against fraud and the protection of public welfare.

The opinion cites Stephenson v. Dept. of Agriculture, 342 So.2d 60 (1977) whose appeal was denied by the Supreme Court (46 L.W. 3005, 3180). In this case the Supreme Court of the State affirmed the constitutionality of a state law which ordered all motor vehicles, trucks, and hawling trucks to stop at inspection stations of the State Department of Agriculture and Consumer Services to be inspected. It held that this constituted a valid exercise of the State's police power.

The Supreme Court of Florida, upon declaring the law valid, was careful in pointing out that the searches authorized must be based on the existence of a search warrant and in its defect, based on acceptable legal reasons. The court said:

> ". . . Upon stopping, the majority of operators of such vehicles will probably have no objection to such an inspection and will consent to same; but as

> provided in the statute, if access is refused, the vehicle may not be searched without the inspector obtaining a search warrant or without a legal basis for search without a warrant pursuant to established law. Such in no way impairs appellants' right to be free from unreasonable search and seizure, their right to due process of law, or their right to equal protection of the law. We do not find that it violates any constitutional right of appellant. . . .
>
> "The inspections authorized by statute in the case sub judice fall in a different category. Agricultural inspections appear to be more nearly akin to drivers' license checks than detentions for criminal investigations . . ." (342 So.2d 60, 62 (1977)).

In view of these expressions on the part of the state court we can understand that the denial of the appeal on the part of the Federal Supreme Court can be interpreted as an affirmation of an unlimited discretional power of the state to conduct inspections or administrative searches.

United States v. Biswell, 406 U.S. 311 (1972) is not applicable to the instant case either because it does not deal with a state inspection system to insure evidence for criminal purposes. The regulatory inspection discussed in this case is directed to businesses of

licensed firearms dealers with the purpose of determining whether they are complying with the federal rules on sales of firearms.

To interpret that where Act No. 22 authorizes the search of passengers' suitcases, bags, and luggage without a search warrant or reasonable grounds, it is merely authorizing administrative inspections under the State's police power, would be to force the letter and spirit of the law beyond what is reasonably permitted. The searches authorized by said statute do not have the exclusive purpose of seizing objects. The facts of this case demonstrate this. Appellant was stopped, accused, tried, and convicted as a result of the search of his luggage conducted pursuant to said act. The police power of the state is not synonymous to the power of the police to stop persons and search them without reasonable grounds. The latter is what Act No. 22 authorizes against the clear constitutional provisions which forbid it.

The judgment appealed should be reversed and the appellant acquitted.

Appendices

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico, Plaintiff and appellee	Judgment of the Superior Court, San Juan Part, Charles E. Figueroa, Judge
v.	No. Cr-77-24
Terry Terrol Torres Lozada, Defendant and appellant	Violation of Art. 404, Controlled Substances Act Constitution-ality of Act No. 22 of August 6, 1975

Opinion delivered by MR. JUSTICE DIAZ CRUZ.

San Juan Puerto Rico, December 14, 1977

Appellant arrived at Isla Verde International Airport on a commercial flight from Miami, Florida. His behavior and appearance caught the attention of Puerto Rico Police agents assigned to the airport, who without a search warrant nor reasonable grounds to arrest, conducted a "routine checkup" of the visitor's luggage, pursuant to the provisions of Act No. 22 of August 6, 1975 (25 L.P.R.A. § 1051 et seq.). From one of his suit-cases the agents seized a paper bag containing a shredded substance which turned out to be marihuana, a wooden pipe with residues of said substance and

$250,000 in cash. In the trial held for the violation of art. 404 of the Controlled Substances Act (24 L.P.R.A. § 2404), the defendant moved for the suppression of the evidence seized from his luggage because it had been obtained as a result of an illegal search, he contested said Act No. 22 on the grounds that it was repugnant to the Fourth Amendment of the Constitution of the United States as well as to Art. II, Sec. 10, of the Constitution of the Commonwealth of Puerto Rico. The trial judge rejected the argument on the authority of Henderson v. United States, 390 F.2d 805; John Bacall Imports, Ltd. v. United States, 287 F. Supp. 916; United States v. Stornini, 443 F.2d 833 (1st Cir.);[1] and Cervantes v. United States, 263 F.2d 800 (9th Cir.). He also cited as grounds for decision the following: "It is a well-known fact that Puerto Rico faces a serious problem with the traffic and smuggling of narcotics, firearms, and explosives on the part of individuals who travel freely between Puerto Rico and the United States. Said problem has worsened during the last few years notwithstanding the measures taken by local as well as federal authorities to cope with the same. This is mostly due to the fact that Puerto Rico does not have at its airports and docks an office for the inspection of luggage, packages,

[1] "Customs officials may search an individual's baggage and outer clothing in a reasonable manner, based on subjective suspicion alone, or even on a random basis." Stornini, supra.

bundles, and bags of passengers and crew members who travel between Puerto Rico and the United States. Thus, the need arose for the Government of the Commonwealth of Puerto Rico to set up some sort of effective and corrective measure to eliminate this increasing illegal traffic which was progressively becoming more profitable in view of the fact that there was no control on the part of the United States government. The federal government exerts no effective control in this area; it only conducts sporadic inspections carried out by the United States Department of Agriculture when checking for tropical plants and fruits which may be harmful to public health and agriculture. . . . Puerto Rico's present circumstances require that courts reexamine the legal doctrines in effect, adapt Law to present circumstances, and adopt the rules that best serve the interests of society as a whole, particularly when public safety and perhaps even its own existence is at stake."

The defendant was convicted and sentenced on January 7 of this year to serve from 1 to 3 years imprisonment; the arguments on appeal are basically directed to contest the legality of the search and the constitutionality of the Act.

I

Act No. 22 of August 6, 1975, distorted.

According to some criteria, routine inspection of luggage and packages at

the airports and docks of Puero Rico constitutes a violation of the Fourth Amendment of the Constitution of the United States and of Art. II, Sec. 10, of ours. Let us first reread art. 1 of Act No. 22. It is evident from its text that the Police is authorized by said Act to carry out two different activities at airports and docks: on the one hand, the inspection of luggage, packages, bundles, and cargo which does not require "reasonable grounds"; and on the other, the detention, questioning, and search of individuals with regard to which there are reasonable grounds to believe that they illegally carry about their persons firearms, explosives, narcotic substances, depressants, stimulants, or similar substances. We must not confuse two concepts so carefully set apart by the lawmaker as are the inspection (of luggage and cargo) and the search (of individuals) disregarding the clear wording of the statute and seeking support in ambiguous expressions voiced in the legislative debate by representative Del Valle Escobar, who is not a lawyer, but who said enough to disallow the position that this Act does not grant more authority to inspect luggage than that authorized by the Rules of Criminal Procedure, and we quote from the Diario de la Cámara* (July 2, 1975):

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*Translator's Note: Reference is made to the Journal of Proceedings of the House of Representatives.

"Mr. López Soto: With regard to the authority granted to the Police, must it be granted through this Bill, doesn't the Police already have it as such?

"Mr. Del Valle Escobar: We were informed by the Police Superintendent and the Secretary of Justice, that it does not have said authority at this moment, that it has to be granted by law. That is why this Bill should be approved.

"Mr. López Soto: Why doesn't the Police have this authority?

"Mr. Del Valle Escobar: Customs does not properly inspect the luggage and the arrivals of these individuals to Puerto Rico. With this Bill the Police is authorized to observe any suspect and to inspect his luggage. . ."

This portion of the legislative debate has sometimes been disregarded and the Legislature charged with an empty gesture on the grounds that the parliamentary debate shows that Act No. 22 "did not mean to grant the Police more authority than that permitted by the Rules of Criminal Procedure." The lawmakers, as well as the Secretary of Justice, and the Police Superintendent, on whose reports Representative Del Valle Escobar based his recommendations, knew that the Rules of Criminal Procedure, which were in effect since the year

1963, authorized the search of luggage and merchandise with reasonable grounds. They were also aware of the fact that said Rules applied to airports and docks within Puerto Rico's territorial limits. Their recommendation, which was accepted by the Legislature, was not aimed at seeking legislation to extend the Rules of Criminal Procedure to airports and docks but rather to give law enforcement officers an instrument not provided by said Rules, to wit: the authority inspect luggage and cargo even when there is no reasonable ground for said action. This argument attributing ignorance and futility to the action of the Legislature contemplates the possibility that, in the future, legislation may be passed extending the Penal Code to Ponce or the Mortgage Law to Caguas.

Maintaining the case in its right prospective, we must conclude that the purpose of the Act was not to promote tourism.[2] What was actually needed to strengthen public order and safety was a method which would allow the inspection of luggage by the Police without interfering with its owners, an unpretentious copy of the border search

[2]Despite the lengthy constitutional debate on inspections and searches and the statement of motives of the Act, it has been suggested that the purpose of Act No. 22 was related to the development of tourism.

or its functional equivalent already recognized by North American public law. Hence, the basic distinction in its text between inspection of luggage and search of persons. To argue the opposite would be to charge the Legislature with a blunder, the superfluous and futile act of approving for airports and docks the same search and seizure rules that since 1963 apply within their limits. By isolating certain phrases from the general context of the confusing legislative debate, it might be possible to arrive at such an odd conclusion but the text of the law finally enacted is perfectly clear. Consistent with the judicial power's fundamental deference to the logic, intelligence, and capacity of our legislators, who did not abdicate the right of Puerto Rico to protect its people, we are bound by the clear text of the statute and not by the ambiguity of the debates.

II

Inherent power of the State

Article II, Sec. 10, of the Constitution of the Commonwealth of Puerto Rico provides that:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.
>
> "Wire-tapping is prohibited.

"No warrant for arrest or search and seizure shall issue except by judicial authority and only upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons to be arrested or the things to be seized.

"Evidence obtained in violation of this section shall be inadmissible in the courts."

The Fourth Amendment of the Constitution of the United States expresses:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The basic protection, which is at the same time a curtailment of the excessive intrusion on the part of the Government, is against "unreasonable" searches and this concept of reasonability or the lack of it is the prevailing concept in the Constitution of the United States as well as in our Constitution. Reasonability is determined by taking all circumstances into consideration, particularly those that

demand urgency in pursuit of a balance between individual rights and society's needs. Terry v. Ohio, 392 U.S. 1 (1968); Elkins v. United States, 364 U.S. 206 (1960); United States v. Biswell, 406 U.S. 311 (1972). The lawfulness of warrantless searches of individuals and vehicles crossing the border even in the absence of probable cause, had early recognition in Congressional legislation and judicial doctrine. Boyd v. United States, 116 U.S. 616 (1886); Carroll v. United States, 267 U.S. 132, 134 (1925). The exception is based on the concept of national self-protection which requires that upon arrival a person has to identify himself as entitled to enter, and his belongings as effects which may be lawfully brought in. Carroll, supra. From the beginning, laws authorizing the search and seizure of objects of prohibited possession by individuals, such as counterfeit currency or contraband, were not embraced within the prohibition of the Fourth Amendment. Boyd v. United States, 116 U.S. 161, 624 (1886); cf. United States v. Ramsey, 52 L.Ed.2d 617, 626 (1977).

Under this premise, it has been held that routine inspections and searches of individuals and their luggage at borders or points of entry may be carried out even without probable cause. The authority to carry out these searches is extended to the so-called "functional equivalent" of the border, including an airport to which

an airplane arrives after flying over the border. Almeida-Sánchez v. United States, 413 U.S. 266, 272-3 (1973); cf. United States v. Brignoni-Ponce, 422 U.S. 873 (1975); United States v. Ortiz, 422 U.S. 891 (1975).

Puerto Rico is a country organized under a constitutional form of government; its political authority extends to the Island of Puerto Rico and to the adjacent islands within its jurisdiction. Constitution, Art. I, Sec. 3. The government of Puerto Rico has the obligation of maintaining public peace and security, essential elements of a people's faith in justice, and of a courageous, industrious, and peaceful life, ideals that are set forth in the Preamble of our Constitution. In 1975 Puerto Rico's Legislature acknowledged the existence in our country of a serious public safety problem promoted by the illegal introduction of firearms, explosives, and narcotic drugs through our airports and docks by passengers and crew members arriving from the United States, and in the Statement of Motives of Act No. 22 of August 6, 1975, pp. 658-9, it stated the following:

> "Puerto Rico is at present entangled in a vigorous campaign directed to prevent the buying and selling, tranfer and use of narcotic drugs, firearms, and explosives.

> "It is widely known that among passengers and crew who arrive in the Island from the United States, there are persons who illegally bring with them or in their luggage, bundles, bags, and packages, firearms, explosives, narcotic drugs and other substances controlled by law. The Federal Government does not require these passengers or crew to go through the Customhouse after arrival in the Island for inspection of their luggage or person. This has contributed greatly to an increase in the smuggling of firearms, explosives, and narcotic drugs by this [sic] means, with its concomitant results which are manifested by a rise in criminality and greater insecurity among the citizenship [sic].
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> "The inspection of luggage, cargo and persons to reduce the introduction of firearms, explosives, and narcotic drugs illegally brought from the United States to Puerto Rico is a legitimate area of control on the part of our government in exercising its police power, especially when the same is not covered by the Federal Government, and there is no conflict of authority on this matter between both governments.

To cope with this situation, the first section of the Act provides:

> "The Police of Puerto Rico is hereby empowered and authorized to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States; to examine cargo brought into the country, and to detain, question, and search those persons whom the Police have ground to suspect of illegally carrying firearms, explosives, narcatics, depressants or stimulants or similar substances."

The Act authorizes routine and random searches of luggage and bundles at points of entry in our country such as airports and docks which may be, by analogy, considered "border": Almeida-Sánchez, supra. The Legislature acted in the valid exercise of its power to protect the life, freedom and property of the three million Puerto Ricans who live on the Island[3]. The State's

[3]Such action on the part of the Legislature--in the absence of federal regulation--does not create a conflict with this jurisdiction. "Where, as here, Congress has not entered the field, a state may pass inspection laws and regulations, applicable to articles of interstate commerce designed to safeguard the inhabitants of the state from fraud, provided only that the regulation neither discriminates against nor substantially obstructs the commerce." California v. Thompson, 313 U.S. 109, 114 (1941).

interest in curbing the arrival at our shores and airports of destructive, degrading, or deadly instruments, has precedence over the right of those arriving to not have their luggage searched. The individual's right to privacy yields to the more preponderant right of the vast Puerto Rican community. To think that when fighting such a serious threat to society's very existence the Government has to yield to constitutional demands good in other times and places, is to disrupt the balance between society's interest and the individual's interest. Those who bring weapons, narcotics, and explosives into our country do not stall. The Constitution has to be construed in harmony with the times, honoring a reality contained in Jefferson's phrase: "The world belongs to the living generation."

The Commonwealth has its origin in Public Law 600 of the 81st Congress entitled "An Act to provide for the Organization of a Constitutional Government by the People of Puerto Rico" its preamble reads as follows:

> "WHEREAS the Congress of the United States by a series of enactments has progressively recognized the right of self-government of the people of Puerto Rico; and
>
> "WHEREAS under the terms of these congressional enactments an increasingly large measure of self-

government has been achieved: Therefore

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, fully recognizing the principle of government by consent, this Act is now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption." L.P.R.A., Vol. 1, pp. 136-137.

The body politic that eventually was created by mutual agreement between the Congress and the People of Puerto Rico is not a federate state, even though it is within the constitutional structure of the United States. Its creation responded to ethnic, cultural, and geographical differences, that is why it is considered a unique entity[4] where, with limited incidence, laws and principles of federation operate in a different way to the uniform standards that govern the States of the Union.

In the area with which this case is concerned--the inspection of luggage

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[4] Mora v. Mejías, 115 F. Supp. 610 (1953); Wackenhut Corp. v. Aponte, 386 U.S. 268 (1967); Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974); Examining Board of Engineers v. Flores de Otero, 426 U.S. 572.

of travellers arriving at our International Airport from the United States--our island borders stand out as an exception shared only with the State of Hawaii. Puerto Rico is a 3,600 square mile island completely surrounded by the international waters of the Caribbean Sea and the Atlantic Ocean. This results in a severance of the geographic continuity which merges 48 of the states of the Union into a single territorial body whose safety and order is protected by Congressional and state legislation. Hence, those states are not as vulnerable as Puerto Rico to the entry into their territories of smugglers and traffickers of illegal merchandise.[5] These circumstances have created in Puerto Rico a de facto border for "domestic" travelers which requires as much surveillance as United States international borders. Since federal authorities have not pre-empted the field, there was a sufficient delegation of that fundamental power that belongs to every state, the protection of the safety of its people, in the recognition by Congress of "the right to

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[5] It is a known fact that Puerto Rico is the distribution center for all types of smuggled goods. Besides weapons and narcotics, the heavy traffic also includes diamonds, to such a point that Peter Hamill's New York Daily News syndicated column has called San Juan the "dirty and dangerous centerpiece of the international diamond racket." (San Juan Star, Oct. 21, 1977.)

self-government of the people of Puerto Rico" and the expressed intention "that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption." (Public Law No. 600, ante.) The power of the Commonwealth to protect the safety of its residents "is consubstantial with its existence as a State, and inseparable from its police power." Commonwealth v. Rosso, 95 P.R.R. 488, 523-4 (1967).

Stereotyped uniformity is not a characteristic of contemporary North American constitutional doctrine. In an important matter such as freedom of speech, communities are to decide on the obscenity of a publication according to their own standards of propriety and morality. Miller v. California, 413 U.S. 15 (1973); Hamling v. United States, 418 U.S. 87 (1974). Puerto Rico has no reason, then, to adopt an inflexible attitude towards passenger movement between states, when in any case, it is excluded by the special political and geographical structure of the Commonwealth which distinguishes it from the States.

A body politic organized under a constitutional system of "self-government," even with a minimum degree of autonomy, is inevitably empowered to exercise the police powers necessary for its own safety and preservation, closing doors to possible threats to public peace in its territory and supplying surveillance in areas that are not protected by the central metro-

political power.

The provision of Act No. 22 authorizing routine inspections and searches at points of entry to Puerto Rico is fully justified and kept within the concept of reasonability which is a parameter of the constitutional clauses that offer protection against undue interference of the State with the person. Said Act No. 22--the product of a careful and reasonable balance of interests--does not contravene the Fourth Amendment of the Constitution of the United States nor Art. II, Sec. 10, of ours. The search and seizure carried out in the circumstances of this case do not overstep the standard of reasonability.

The obligations assumed by the United States through the Treaty of Paris of 1898 for the protection of life and property in Puerto Rico and the powers that through said Treaty were vested in Congress for the determination of the civil rights and political status of the Island's inhabitants; Public Law 600; the federal case law acknowledging the concept of a de facto border,[6] the unique character of the Commonwealth

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[6] The concept of de facto border or its functional equivalent was accepted in United States v. Mirmelli, 421 F.Supp. 684, where interference with merchandise is interstate commerce on mere suspicion was justified.

within the United States constitutional structure and the modern trend of the National Supreme Court favoring the States' as well as the communities' autonomy, thus encouraging diversity within the federation (Miller v. California, 413 U.S. 15 (1973); Kewanee Oil v. Bicron Corp. 416 U.S. 470 (1974), constitute strong foundations of the constitutionality of Act No. 22. Occasionally, definitions that are just a reverence to the past contained in the Immigration and Nationality Act (8 U.S.C. §§ 1101-1503) and in the Federal Plant Pest Act (7 U.S.C. §§ 150aa-150gg) in which we are included as a "possession" of the United States are brought as arguments against them. The effect of this argument is as if in tomorrow's paper we were to find this headline: The SS "Maine" is sunk in Havana harbor.

To deny constitutionality to the Act would produce, as an end result, two unacceptable premises: 1st, this Court would deprive the Executive Branch of an instrument to fight contemporary crimes like terrorism, drugs, and murder that has been used moderately and following strict standards of civility, since Police searches luggage in sporadic cases when confidential information is received or when a passenger acts suspiciously. A decision of the Court in this sense would impair the fundamental power of every state, or organized government if we choose not to recognize the national structure of Puerto Rico, to guarantee peace and

safety within its territory; and 2nd, by disregarding our frugal self-government, this Court would incur in the juridical anomaly of establishing a double standard for privacy at the Isla Verde International Airport: federal Customs and Immigration officials may freely stop passenger arriving from foreign country only two steps away from Puero Rico's law enforcement officers who cannot stop travelers moving between the United States and Puerto Rico. That is, a Puerto Rican or an individual of any other nationality arriving at the Airport from Switzerland, Japan, or Argentina has less personal dignity in the eyes of federal agents who are not discouraged by their privacy, than the traveler arriving from the Bronx, Chicago, Chinatown, or San Francisco, who is untouchable. To protect such inequality under a constitutional cloak was inconceivable even in the days of the horse and buggy.

Puerto Rico, as every other country in the free world, faces very serious problems in terms of public safety and public order. The Constitution is a living organism, it is the Law of the Land adopted to rule and protect civilized society. The much handled cliché about the "price we must pay for freedom" should not be inflated to a point in which free institutions must yield to anarchy, terrorism, and murder. A slight inconvenience to a suspicious traveler who is required to open his packages or his handbag, a practice

to which travelers in all ports of entry in the civilized world are used to, does not justify the annulment of Act 22 which authorizes these searches and which represents the will of the people seeking respite from the merciless blows of crime.

There are those who refuse to acknowledge the Puerto Rican's right to self-protection because we have no "borders" except those of the United States. But in the belief that even those of us who have had to live "without borders" have a right to peace and security in our society, this opinion based on the decisions of the Federal Supreme Court in Brignoni-Ponce, Ortiz, and Almeida-Sánchez, classifies our airport as a "functional equivalent" of a border and in doing so we have not had to abandon the North American constitutional doctrine.

If the argument that Act No. 22 does not give the Police more power of inspection than that already conferred by the Rules of Criminal Procedure prevails, the Legislative Assembly would have performed a useless act. When Sec. 1 speaks about "reasonable grounds" it refers to the search of individuals, but not to the inspection of baggage, luggage, handbags, and packages. This was a restriction imposed by the Legislature of Puerto Rico since, as we can see in the cases cited, the Fourth Amendment of the Constitution of the United States is not applicable at "borders" or

at "functional equivalents" of borders.

The Act was adopted to take a stand against the helplessness of the country vis-á-vis the increasing traffic of weapons, drugs, and explosives. This situation called for a mechanism similar to the one used by immigration at borders, more radical than those provided by the Rules of Criminal Procedure. This is the purpose of the Act, clearly stated in its statement of motives, regardless of the interpretation given to any of the arguments voiced by one of the House Committee members. The wording of the Act should be its first source of interpretation, and the one under our consideration clearly states:

> "The Police of Puerto Rico is hereby empowered and authorized to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States; to examine cargo brought into the country . . ."

The Police has a terse mandate of the Legislature to protect this society in the critical area of entry into the country. Annulment of the Act to require reasonable grounds or probable cause would have two unfortunate consequences: either the Executive Branch abandons the inspection of baggage at the airport and keeps the doors open for the introduction of smuggled goods

into our country, or the Police will find "reasonable grounds" to interfere, not only with baggage and handbags, but with individuals.

It would at least be a strange endeavor for this Court to minimize action by Congress in Public Law 600 hightening the principle of "government by consent of the governed" and giving Puerto Rico power to "organize a government pursuant to a constitution of their own adoption," instead of making way for the Supreme Court of the United States to pass upon the validity of the constitutional issue. This legislation on the part of Congress springs from the obligation assumed by the United States under International Law to protect life and property in Puerto Rico (Art. I of the Treaty of Paris of 1898) and the statement in Art. IX of the Treaty, to the effect that the civil rights and political status of the native inhabitants of the territories ceded to the United States would be determined by Congress. Is the child of the will of Congress so maimed and crippled that it is condemned to be the defenseless prey of vulgar transgressors who trample on the right to life, freedom, and property of this people? Life is made up of trifles and fundamental things. We must grasp the first in order to not lose track of the latter. Let us not relinquish the dignity of our country to the suitcases of a smuggler.

III

Judicial review of laws

This is the most impressive power of the Supreme Court as the keeper of the Constitution. In American constitutional development it won against a vibrant nucleus of opinion who saw in this attribute the surrender of public power to a "robed oligarchy." Only moderation and educated abstention on the part of the Judicial Branch in the exercise of this power has preserved its prestige and approval in the eyes of the people.

The Legislature of Puerto Rico, the purest and most legitimate representative of the people's will, adopted Act. No. 22 as society's urgent and critical protective measure against the appalling degree of violence that has quashed people's right to life, freedom, and property. It was not enacted as a hysterical reaction, but responding to a state of anguish and insecurity that has befallen Puerto Rico. The Legislature acted out of humanity rather than by legislative duty. In doing so it received the advice of the Secretary of Justice, of eminent lawyers who hold seats in the House and Senate, and of the Congressional Research Service[7] of the Library of Congress. It

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[7] Report submitted by the Library of Congress to Commissioner J. Benítez, on June 4, 1975.

will be very difficult for our people to understand how a Legal system can possibly surrender the dignity and safety of three million Puerto Ricans to the right of a smuggler to not have his suitcases opened. The purpose of the Constitution was to protect the rights of the people, not to yield to the Government or to common transgressors.

The exercise of judicial power to annul legislation should be reserved for more shocking legislative transgressions of clear constitutional restrictions. The decision of tossing aside the work done by the legitimate representatives of the people--the supreme ruler--should be arrived at as an infrequent and painful remedy and in extraordinary circumstances invested with constitutional dimensions. Appellant's claim for privacy as opposed to the security of the State, does not have that dimension.

IV

Contemporaneous Vitality of the Constitution

A court should not abstain from making the constitutional law that the times demand. The great value of the Constitution of the United States as supreme instrument of Law is largely due to the legal thought of the judges who have undertaken its interpretation throughout two centuries. On his day,

each one faced the problems of his epoch. Their decisions, preserved for the ones that followed, enjoy the prestige of their intelligence analyzing and declaring the Law as they understood it. Nevertheless if any one element has influenced the development of Constitutional Law, it has been the free exercise of the creativity of judges who did not confine their adjudicative power to concepts already enunciated before them, nor did they lock it up in the conceptual prison of stare decisis. As in any other area, Constitutional Law precedents help to direct the thought of future generations, but not to fetter and paralyze the thought and the deliberative power at the moment in which they were produced. If North American constitutional criterion had come to a standstill, set on anachronical precedents, the nation would have not attained the political and personal freedom enjoyed by its citizens. That there is but one text of the Constitution, varied by the way it has been understood by different generations of judges, is evidence in the broadening of the concept of "due process" contained in the Fourteenth Amendment, which was originally proposed to guarantee fair trials for recently freed slaves and broadened to evaluate the constitutionality of state laws in areas such as electoral distribution and representation; the refusal of federal jurisdition to blacks because they were objects of private property protected by the

Fifth Amendment and not citizens (Dred Scott v. Sanford, 19 How. 393; 15 L.Ed. 691); the imposition on public school students of a salute to the flag ceremony against their religious beliefs, (Minerville School District v. Gobitis, 310 U.S. 586); the distinction between political and social equality under the "equal protection" of the Fourteenth Amendment which validated the separation of American citizens according to race in schools, theatres, trains, and other public places (Plessy v. Ferguson, 163 U.S. 537; 41 L.Ed. 256, 258) and the decision that judges were exempt from the payment of income tax which decreased their salaries. Evans v. Gore, 253 U.S. 245. Such varied pronouncements, some of which seem unusual to us today, responded to the judicial thought of the time, inevitably molded by ethical and moral concepts, and social needs of the time. The evolution of civilization and continuous progress and the new challenges to legal order, require a renewed constitutional law fit for our times, exercised freely and unencumbered by resonant precedents, some of great humanitarian content, but ineffective today to protect the Constitution from its critics. Democracy and freedom are not defended by swan songs or odes that had their time and place but that today are mere refrains for minstrels. The value of the Constitution lies in its vital content of

liberty which will last as long as judges who carry it in their heart discover its contemporaneousness.

I uphold the Act and the decision of the Superior Court.

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico,

Plaintiff and appellee

v.

Terry Terrol Torres Lozada,

Defendant and appellant

Appeal from the Superior Court, San Juan Part, Charles E. Figueroa, Judge

No. Cr-77-24

Violation of art. 404 of the Controlled Substances Act

Separate opinion of MR. JUSTICE MARTIN concurring in the Judgment and dissenting from the separate opinion of the numerical majority of the Court.

San Juan Puerto Rico, December 14, 1977

This case is mainly concerned with the protection of an individual's effects from unreasonable searches based on Section 10 of Article II of the Constitution of the Commonwealth of Puerto Rico, in the light of the corresponding provision contained in the Fourth Amendment of the Constitution

of the Commonwealth of Puerto Rico, in the light of the corresponding provision contained in the Fourth Amednment to the Constitution of the United States of America.

The legislation under our consideration has its origin in the determination made by the Legislature in its seventh special session which met in the summer of 1975,[1] in the sense that "It is widely known that among passengers and crew who arrive in the Island from the United States, there are persons who illegally bring with them or in their luggage, bundles, bags, and packages, firearms, explosives, narcotic drugs and other substances controlled by law." And to the effect that "This has contributed greatly to an increase in the smuggling of firearms, explosives and narcotic drugs by this means, with its concomitant results which are manifested by a rise in criminality and greater insecurity among the citizenship.[2]

On the other hand we can take judicial notice of the fact that in United States airports where flights to Puerto Rico are originated no measures are taken to prevent passengers and crew members from bringing firearms, explo-

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[1] Act No. 22 of August 6, 1975, pp. 658-660, 25 L.P.R.A. §§ 1051-1054.

[2] Ibid, Statement of Motives, pp. 658-659.

explosives or controlled substances in their luggage.

The defenselessness of our borders is evident. The increase in criminality, mostly imported, evinced by the great number of crimes connected with unregistered weapons, as well as those related to controlled substances and explosives, forced the Legislature to take measures to effectively fight criminality through said Act 22 and consequently, to protect the security of and bring peace to the citizenry.

Said legislation authorized the Police of Puerto Rico to inspect baggage, packages, luggage and bundles of passengers and crew members landing at airports and docks of Puerto Rico from the United States and to examine cargo brought into the country to determine whether it contains firearms, explosives, and controlled substances not legally accounted for. Ibid. Act 22, sec. 1, 25 L.P.R.A. § 1051. In my opinion "reasonable grounds" are not required to believe that said luggage, etc. contains the forbidden articles mentioned. The "reasonable grounds" requirement is necessary with regard to searches of persons. If we were to understand that "reasonable grounds" are also required to search the above-mentioned articles as well as individuals, we would have to conclude that the Legislature was legislating in a vacuum, in other words, that it was performing a useless act, since Rule 231 of the Rules of Criminal Procedure

requires that searches be carried out only after a warrant has been issued by a magistrate before whom a statement had been made under oath or affirmation setting forth the facts tending to establish the grounds for issuing it. 34 L.P.R.A., App. II, R. 231. Rule 231 complies with the Constitutional precepts contained in Section 10 of Article II of the Constitution of the Commonwealth of Puerto Rico and in the Fourth Amendment of the Constitution of the United States which requires that orders authorizing searches, and arrests shall be issued by judicial order, and only when there is probable cause based on oath or affirmation describing the place to be searched in detail as well as the individual to be arrested or the object to be seized.

In spite of the constitutional provision mentioned there are circumstances in which the law authorizes a peace officer to arrest and search individuals, places or things without a warrant. Rules 11 and 12 of the Rules of Criminal Procedure, 34 L.P.R.A. App. II, R. 11,12. That may be the case: (1) when he has reasonable grounds to believe that the person about to be arrested has committed the offense in his presence, Id. R. 11(a), People v. Cruz Rivera, 100 P.R.R. 340 (1971); (2) when the person arrested has committed a felony, although not in his presence, Ibid. R. 11(b), People v. Gonzalez Rivera, 100 P.R.R. 650 (1972); or (3) when he has reasonable cause to believe that a person to be

arrested has committed a felony, whether or not said offense has in fact been committed. Ibid. R. 11(c).

The person authorized to carry out the arrest in these cases does not necessarily have to be a peace officer, since there are circumstances in which a private person may do so. The latter may arrest: (a) for an offense committed or attempted in his presence, or (b) when a felony has been in fact committed and he has reasonable cause for believing that the person arrested committed it. Ibid. R. 12, 32 L.P.R.A. App. II, R. 12. As we can see the arrest carried out by a private person is limited to stricter situations than when it is carried out by a peace officer.

Once the arrest takes place, even without a warrant, the peace officer may search the individual as well as the area under his control, when it is incidental to a lawful arrest. Gonzalez Rivera, supra. Our case law as well as that of the Supreme Court of the United States has recognized warrantless searches despite the constitutional provisions protecting the individual's right against unreasonable searches. Id.; United States v. Robinson, 414 U.S. 218 (1973); Gustafson v. Florida, 414 U.S. 260 (1973).

I have briefly described the cases in which the law and the case law have departed from the literal sense of the Fourth Amendment of the Constitution of the United States and of Section 10

of Article II of our Constitution, and have allowed warrantless searches in cases in which they are incidental to a valid arrest. I have not been able to find, however, an instance in which a search could be carried out without a lawful arrest. But I understand that there may be special circumstances to justify it. We are dealing with emergency legislation--Act No. 22. The statement of motives of this Act reveals the crisis the country is going through as a result of the crime wave which is greatly due to the ease with which weapons, explosives, and controlled substances are obtained and to the inevitable impunity with regard to the offenders. Under these circumstances I respect the wisdom of the lawmaker in displaying a legitimate concern over the helplessness and defenselessness of the executive branch, in view of the latter's inability to stop the continuous infiltration of the criminal objects mentioned in Act 22. Once they enter the country their dissemination is impossible to control. Never before was a Legislative action so justified for easing, though partially, the growing incidence of the aforementioned criminal acts.

I realize that the protection against unreasonable searches should be safeguarded but not when it affects the community. The core of the problem boils down to the constituents of a reasonable search. Reasonability should be judged according to the cir-

cumstances of the case to which it is applied, and which should only depart from the constitutional precept in cases strictly demanding it. I feel that this is one of those situations. The law itself requires that police intervention should be respectful and as brief as possible. No abusive act has been mentioned as to the way the defendant was stopped. The defendant was not searched. The search was limited to the two suitcases in which a bag of marihuana was found along with the pipe containing residues of said narcotic, and Two Hundred Fifty Thousand Dollars ($250,000) cash. We understand that in other cases narcotic substances worth millions of dollars have been found. See San Juan Star, December 2, 1977; El Nuevo Dia, December 2, 1977. We are dealing with a clear case in which a slight inconvenience to a passenger should yield to the welfare, security, health, and protection of the people in general who, in the absence of effective legislation, are at the mercy of consequences resulting from allowing smugglers of weapons, explosives and narcotics to shelter themselves beneath the protective cloan of unconstitutional prerrogatives, whose raison d' etre is based on the principle set forth in the preamble of our Constitution: We considered determining factors in our life . . . our faith in justice; our devotion to the courageous, industrious and peaceful way of life . . . and our hope for a better world. . . ."

Although the rule states in Miller v. California, 413 U.S. 15 (1973) and in Hamling v. United States, 418 U.S. 87 (1973) is not strictly applicable to the circumstances of this case, I find certain analogy there with the special circumstances that this country has to face as a result of the uncontrolled rise in criminality, different from other areas of the United States.

In the cases cited, the National Supreme Court had to decide on the right of the distributors of pornographic material in view of the alleged protection of the First Amendment of the Constitution of the United States barring Congress from adopting any law abridging freedom of speech or of the press. In Miller, upon weight the moral standards of the nation in general and of the community in particular with regard to obscene materials, the Court stated the following:

> "It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Main or Mississippi accept public depiction of conduct found tolerable in Las Vegas, or New York City. People in different States vary in their tastes and attitudes, and this diversity is not to be strangled by the absolutism of imposed uniformity. As the Court made clear in Mishlin v. New York, 383 U.S., at 508-509, the primary concern

with requiring a jury to apply the standard of 'the average person, applying contemporary community standards' is to be certain that, so far as material is not aimed at a deviant group, it will be judged by its impact on an average person, rather than a particularly susceptible or sensitive person--or indeed a totally insensitive one. [Citations.] We hold that the requirement that the jury evaluate the materials with reference to 'contemporary standards of the State of California' serves this protective purpose and is constitutionally adequate."
pp. 32-33.

The analogy to which we refer presupposes the distinction between Puerto Rico's unique situation and that of the other states which make up the nation and which are part of a single block. Our unique situation exposes us to an uncontrollable flow of the articles mentioned in the statute, without means to curb the same. We have tried to adopt a Weapons Law as strict as can be, as well as a Controlled Substances Act and an Explosives Act, which cannot be effectively administered in view of the overflow of illegally imported articles mentioned in Act No. 22. We can take judicial notice of the fact that in many States there is no effective weapons control, that is why they can be obtained in a

free market with relative ease. Since the United States is one of the greatest weapon producers in the world, any one may have easy access to them. In view of this fact the Puerto Rican people should be protected, and it is incumbent upon the Legislature to do so in an effective manner.

Since I feel that the Legislature acted within its constitutional authority in approving Act No. 22 on August 6, 1975 and that the search of the defendant's luggage is in accordance with the standards of reasonability as determined by the legislator after considering the defenseless situation against criminality that our country undergoes, I agree with the judgment of the Court affirming the judgment appealled and dissent from the separate opinion signed by the numerical majority of the Court.

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico Plaintiff and appellee v. No. Cr-77-24 Terry Terrol Torres Lozada, Defendant and appellant	Appeal from the Superior Court, San Juan Part, Charles E. Figueroa, Judge Art. 404, Controlled Substances Act

Opinion of MR. JUSTICE NEGRON GARCIA.

San Juan, Puerto Rico, December 14, 1977

The case at bar demands ". . . the composure [necessary] to fuse the rights of the individual which if unrestrained could be conflictive among themseleves and the right of the community--represented by the Legislature--to life, health, and welfare." 4 Diario de Sesiones de la Convención Constituyente (Journal of Proceedings of the Constitutional Convention) 2576 (1961 ed.). The constitutionality of Act No. 22 of August 6, 1975 (25 L.P.R.A. § 1051) is questioned. The purpose of said Act which seeks the

general welfare of the people is clearly established in its Statement of Motives:

> "Puerto Rico is at present entangled in a vigorous campaign directed to prevent the buying and selling, transfer and use of narcotic drugs, firearms, and explosives.
>
> "It is widely known that among passengers and crew who arrive in the Island from the United States, there are persons who illegally bring with them or in their luggage, bundles, bags, and packages, firearms, explosives, narcotic drugs and other substances controlled by law. The Federal Government does not require these passengers or crew to go through the Customhouse after arrival in the Island for inspection of their luggage or person. This has contributed greatly to an increase in the smuggling of firearms, explosives, and narcotic drugs by this [sic] means, with its concomitant results which are manifested by a rise in criminality and greater insecurity among the citizenship [sic].
>
> "The inspection of luggage, cargo and persons to reduce the introduction of firearms, explosives, and narcotic drugs illegally brought from the

> United States to Puerto Rico is a legitimate area of control on the part of our government in exercising its police power, especially when the same is not covered by the Federal Government, and there is no conflict of authority on this matter between both governments."

Upon drafting this opinion the following thought comes to our mind: "nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times." Cardozo, cited in Government of the Capital v. Executive Council, 63 P.R.R. 417, 427-28 (1944.)

With this in mind, we want to state our conviction that said Act is constitutional insofar as it authorizes the police of Puerto Rico to conduct routine inspections of luggage and cargo at the airport--without being tied down to classical reasonable grounds tests--seeking to curb the entry to the country of three articles, which in their varied froms and illegal modalities, are excluded from Puerto Rican, State and federal legal commerce, to wit: weapons, explosives, and controlled substances.[1]

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[1]We have no doubt and therefore we will not discuss our view that under this legislative piece, which makes the search of an individual legal, it is necessary that there be "reasonable grounds" according to our case law doctrine.

We must immediately clarify that this case does not deal with the search of an individual, but with the inspection at the airport of a suitcase containing marihuana which was to be introduced into the country. The inspection was carried out when the behavior and appearance of the appellant--who arrived from Miami, Florida, at Isla Verde International Airport--caught the attention of police agents on duty at said air terminal. As a result thereof he was convicted under the Controlled Substances Act (24 L.P.R.A. § 2404); the constitutionality of said search is questioned before this Court.[2]

I

We must admit that both Art. II, Sec. 10 of our Constitution as well as the Fourth Amendment of the Constitution of the United States, guarantee the people's right to be protected against unreasonable searches. Nevertheless, not every search or inspection violates this basic guarantee.

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[2]We note that appellant does not question or suggest that police officers physically abused or mistreated him while discharging their duty.

First of all, several federal laws and court decisions authorizing searches of individuals and luggage without probable cause constitute persuasive precedents. Some of them permit the searches if there is suspicion; others do not impose any restriction. An example of the latter is sec. 287(a) of the Immigration and Nationality Act (8 U.S.C. § 1357(a)). Under this provision, in Almeida-Sánchez v. United States, 413 U.S. 266 (1973), although the Supreme Court invalidated a search conducted 20 miles from the border between Mexico and the United States--under the hypothesis that there was no consent nor probable cause to carry it out--it distinguished this search from the routine search and inspection conducted at the border, sustaining the legility of the latter.

Likewise, custom and tax laws contain several provisions for inspection and search, some requiring "probable cause to suspect" and others exempt from this requirement. See: 19 U.S.C. §§ 482, 1461, 1467, 1496, 1581, and 1582. In United States v. Ramsey, of June 6, 1977 (45 L.W. 4577), the Supreme Court sustained the legality of the search of some letters pursuant to the aforementioned sec. 482, which authorizes the search of envelopes when there is probable cause suspect that they contain articles introduced illegally into the country. The inspection of said letters was carried out by a customs agent assigned to the New York City Post Office, who upon seeing 8 envelopes coming from

Thailand, suspected they contained smuggled goods because of their bulky aspect. The court, recognizing that the "reasonable cause to suspect" test is less demanding than that of probable cause under the Fourth Amendment, considered the search legal because in its opinion it was a border search. As to this particular it stated:

> "That searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, should, by now, require no extended demonstration."

In its decision the court reaffirmed that border searches without warrant are reasonable within the meaning of the Fourth Amendment; nevertheless it distinguished these searches from those carried out in interstate travel. Although the Supreme Court has thrice reiterated this distinction between interstate travel and travel outside the states, it has, however, avoided review of the legality of searches of passengers boarding planes in the United States for flights both inside and outside the United States.

These searches have been conducted in the nation's airports for more than

seven years. At the beginning this practice was authorized by rules adopted by the Federal Aviation Administration. In 1974 Congress legislated to grant statutory approval to these rules. (49 U.S.C. §§ 1356 and 1357.) These rules sought to prevent the boarding of commercial airplanes by passengers carrying weapons or explosives, in order to reduce skyjacking possibilities. We must point out that formerly, individuals who were to be searched had to first activate a magnetometer (metal detector) and they had to present some of the characteristics of a skyjacker's profile. At present, these elements as well as others required by courts are not considered determining to the legality of the search. To that effect, in United States v. Doran, 482 F.2d 929, 932 (1973), and United States v. Skipwith, 482 F.2d 1272, 1276 (1973) the profile was discarded as a decisive factor; in United States v. Fern, 484 F.2d 666 (1973) a search based on suspicions without the use of a metal detector was deemed legal. In Skipwith, supra, the express consent requirement for the search was elminated when the court held that those who arrived at the boarding area, as well as those seeking entrance to the country are subject to a search based on mere or unfounded suspicion. The following was also mentioned: rules for searching an individual arriving at the boarding area should not be more demanding than those applied at the country's borders; reasonability does not require that at boarding areas the only

persons searched be those who respond to the skyjacker's profile or those who appear to be nervous or suspicious.

It is significant that two of the cases that the Supreme Court refused to review held that searches at airports are analogous to border searches with regard to the requirements of the Fourth Amendment. United States v. Cyzewski, 484 F.2d 509 (1973), cert. denied, 415 U.S. 902; United States v. Moreno, 475 F.2d 44 (1973), cert. denied, 414 U.S. 580. Individuals in these cases acted suspiciously and the searches conducted produced narcotics. In Cyzewski the narcotics were found in a suitcase which was searched after it had been accepted and was under the airline's control.

The above stated suffices to have anyone agree with the statements in United States v. Edwards, 498 F.2d 496 (1974) to the effect that there seems to a consensus among the Circuit Courts as to that searches in airports should not be forbidden under the Fourth Amendment merely because they do not fall under the previously acknowledged categories which are exempt from the warrant requirement.[3]

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[3] See other cases in "Validity", Under the Federal Constitution, of Preflight Procedures Used at Airports to Prevent

II

The foregoing analysis shows different cases where the Fourth Amendment does not represent an obstacle to searches conducted

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Hijacking of Aircraft," 14 A.L.R. Fed. 286 (1973). See United States v. Lopez, 328 F. Supp. 1077, 14 A.L.R. Fed. 252 (1971), and United States v. Davis, 482 F.2d 893 (1973), with regard to administrative and statutory measures and procedures in effect in said cases.

We must clarify that federal legislation on hijacking adopted in 1974 is not discussed in any of the cases considered. Under 49 U.S.C. § 1357(b) the Federal Aviation Administration should set up rules requiring airports to provide peace officers to protect passengers against criminal acts and hijacks. Under 49 U.S.C. §1472(1)(I) it is considered an offense if a person carries or attempts to carry dangerous weapons hidden in accessible places during a flight or who intends to place or places explosives on a plane. Under Paragraph (1) (3) of this section this does not apply to weapons contained in unaccessible suitcases that have been reported to the airline. Under 49 U.S.C. § 1511(a) the Administrator must require, through regulations, that an airplane refuse transportation to passengers or property when the passengers do not agree to the search of their persons or their property. Under paragraph (b) of this section the transportation contract is supposed to include an agreement to the effect that transportation

by federal customs agents at entry points outside the country. Neither does it bars searches conducted by airline agents, or by state or federal agents of passengers, cargo, and luggage before boarding commerical flights.

In view of the mobility of the population and of the modern means of transportation and communication, searches of the type described above have become generalized to the point that individuals entering the nation and those boarding planes on the nation know and realize they have no expectation of privacy in these cases. As the Supreme Court said in United States v. Thirty-Seven Photographs, 402 U.S. 363, 376:

> ". . . a port of entry is not a traveler's home. His right to be let alone neither prevents the search of his luggage nor the seizure of unprotected, but illegal, materials when his possession of them is discovered during such a search. Customs officers characteristically inspect luggage and their power to do so is not questioned in this case; it is an old

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will be denied when said consent is not given. In United States v. Fannon, of June 5, 1977, 46 L.W. 2049, the Court of Appeals sustained the validity of a cargo search, pursuant to § 1511(b), in which heroin was found.

practice and is intimately associated with excluding illegal articles from the country."

In view of the previous statement, let us see if this minimum expectation for privacy is identical or acquires new proportions when searches are carried out under state legislation.

The state power to establish inspection laws has been accepted by the Constitution as well as by the case law of the Federal Supreme Court. Article 1, Sec. 10, paragraph 2, of the Constitution of the United States, insofar as pertinent provides:

> "No state shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws . . ."

Already since the famous Gibbons v. Ogden, 9 Wheaton 1, 203, 6 L.Ed. 23 (1824), the Supreme Court spoke in the following terms with regard to state power over inspection laws:

> . "But the inspection laws are said to be regulations of commerce, and are certainly recognised in the constitution, as being passed in the exercise of a power remaining with the states. That inspection laws . . . form a portion of that immense mass of legislation,

> which embraces everything within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description . . . are component parts of this mass."

The observation of the Supreme Court copied above acknowledges that the constitutional provision not only establishes the right of states to adopt inspection laws, it tacitly grants the right to prohibit exportation and importation of certain articles. Obviously this right to prohibit includes dangerous or hamful articles.

In this context we should remember that Act No. 22, attacked in this case, is an inspection law which authorizes the examination of luggage with the purpose of enforcing our statutes controlling weapons, explosives, and drugs.

The state's power to remove and destroy explosives under police power and possibly under inspection laws was accepted in the opinion of the Supreme Court delivered by Justice Marshall in Brown v. Maryland, 12 Wheaton 419, 443, 6 L. Ed. 678, 687 (1827), when the following was stated:

> "The power to direct the removal of gunpowder is a

branch of the police power, which unquestionably remains, and ought to remain, with the states . . . We are not sure, that this may not be classed among inspection laws. The removal or destruction of infectious or unsound articles is, undoubtedly, an exercise of that power . . . ."

And commenting on police and state inspection powers in the Mayor of the City of N.Y. v. Miln, 11 Peters 102, 139-142, 9 L. Ed. 648, 662-664 (1937) one undoubtedly notes:

". . . That a state has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation; where that jurisdiction is not surrendered or restrained by the constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation, which it may deem to be conducive to these ends.... That all those powers . . . what may, perhaps, more properly be called internal police, are not thus surrendered or restrained;

and that, consequently, in relation to these, the authority of a state is complete, unqualified and exclusive.

. . . . . .

". . . We suppose it to be equally clear, that a state has as much right to guard, by anticipation, against the commission of an offence against its laws, as to inflict punishment upon the offender, after it shall have been committed. The right to punish, or to prevent crime, does in no degree depend upon the citizenship of the party who is obnoxious to the law. The alien who shall just have set his foot upon the soil of the state, is just as subject to the operation of the law, as one who is a native citizen.

. . . . . .

" . . . The power to pass inspection laws, involves the right to examine articles which are imported, and are, therefore, directly the subject of commerce; and if any of them are found to be unsound or infectious, to cause them to be removed,

> or even destroyed. But the power to pass these inspection laws, is itself a branch of the general power to regulate internal police."

We have no doubt as to that state police power is equal to that of a sovereign nation; that inspection laws are part of this power; that these laws include the power of inspection, removal, and destruction; that police power embraces crime prevention even with regard to people coming from abroad.

The power of inspection also covers the power to inspect articles coming from other states. This was sustained by the Supreme Court in Patapsco Guano Co. v. Board of Agriculture, 171 U.S. 345, 357 (1897) upon stating:

> "Whenever inspection laws act on the subject before it becomes an article of commerce they are confessedly valid, and also when, although operating on articles brought from one State into another, they provide for inspection in the execise of that power of self-protection commonly called police power."

Said Court has also acknowledged the power of the states to forbid the introduction of articles that are not in legal commerce. In Compagnie Francaise v. State Board of Health, Louisiana, 186 U.S. 380, 391 (1902),

the Court reiterated the standard stated in several cases:

> ". . . it was held that a state law absolutely prohibiting the introduction, under all circumstances of objects actually affected with disease, was valid because such objects were not legitimate commence . . . . . the power to absolutely prohibit additionally obtains where the thing prohibited is not commerce, and hence not embraced in either interstate or foreign commerce."

The most recent case reaffirming state power to adopt inspection laws is California v. Thomson, 313 U.S. 109, 114 (1941), which holds that the states may adopt inspection laws applicable to articles in interstate commerce as long as said laws do not substantially obstruct or discriminate commerce and Congress has not occupied the field. We must emphasize that nobody questions whether the inspection of the luggage of a passenger arriving at Puerto Rico is a matter on which Congress has legislated; the Federal Government has not occupied the field in the area assigned to the Police of Puerto Rico.

Only two months ago the Supreme Court through a summary action denied an appeal questioning the inconstitutionality of an inspection law of the State of Florida as to (1) the authority it

granted to stop transporters on state roads for inspection of agricultural products without there being probable cause or suspicion that they were carrying agricultural products, and (2) the authority to conduct a search both unreasonable and contrary to the right of privacy and the right to travel freely. The appeal is summarized in 46 L. W. 3005 and denied in 46 L. W. 3130 (Session of October 3, 1977). The case sustains that "appellee has full authority under the police power of the State of Florida to conduct agricultural inspection of the vehicles" and it ends saying: "It is our view that the requirement of the foregoing statute that all trucks and trailers stop at the inspection stations of appellee for agricultural inspection is entirely reasonable and is a valid exercise of the police power of the state." Stephenson v. Dept. of Agr. & Consumer Services, 342 So.2d 60 (1977).

The principles stemming from the commented case law, briefly merged and organized, establish the following: the state's Police Power is like that of sovereign nations, and it embraces: a) the prevention of crime even as to foreigners entering the state; b) the revision and destruction of explosives; and c) the prohibition of entry of article excluded from legal commerce. In short, inspection laws derive from this police power and include such powers as the power to search without probable cause and to restrict and to forbid the entry of articles from other states, as long as said laws do not discriminate

or obstruct interstate commerce substantially.

In view of the foregoing principles, the authority of the States with regard to their police power and power to inspect is clear. Said powers authorize the States to inspect suitcases and cargo coming from other states in order to seize weapons, explosives and narcotics with the purpose of protecting against threats to health, welfare and state security.

III

According to our Constitution, police power and powers of the Commonwealth to inspect are certainly not inferior to those of the states of the Union. In Examining Board v. Flores de Otero, 426 U.S. 572, 594, 597 (1976), the Supreme Court acknowledged that the Congressional purpose in the legislation of years 1950 and 1952 was to grant Puerto Rico the degree of autonomy and independence normally associated with states of the Union; but said court also observed that Puerto Rico's relationship with the United States has no parallel in the history of the nation. Id., 596.

This unparalleled relationship may entail, as in fact in entails, that Puerto Rico has the prerogative and powers that the federal Constitution denies to the states of the Union. As an example, under section 3 of the Federal Relations Act, Puerto Rico has

the power to impose duties on imports, a power denied to the states, paragraph 2 section 10 of the Constitution. And then under sections 9, 38 and 58 of said law, not all federal laws necessarily apply to Puerto Rico. Particularly tax laws and those of interstate commerce, as well as those in conflict with the Federal Relations Act are inapplicable. The states, on the other hand, cannot escape the application of federal laws because they are part of the supreme law of the nation. Barton v. United States, 202 U.S. 344, 368 (1906).

Besides, Puerto Rico has a tacit power for inspection and search that states do not have and it is derived from the power to lay taxes on imports.

This power to lay taxes on imports is identical to that of the federal government over imports in the nation. By virtue of this authority the Supreme Court has acknowledged that custom agents have authority at borders not only to enforce tax laws, but to control the introduction of smuggled goods and illegal material into the nation. As to the border search or its functional equivalent, the analogy and judicial consequences are unavoidable.

The Federal Relations Act has tacitly granted Puerto Rico equal authority at island borders to inspect and search. Section 3 of said law, after authorizing tax on imports instructs, "officials of the Customs and Postal Services of the United States . . . to assist the appropriate officials of the Puerto Rican

Government in the collection of these taxes."

The "assistance" referred to in the provision is certainly not related to administrative aspects (appraisal, execution, etc.) of the collection of taxes, but to the areas of inspection and search, which are those under the control of post office and customs inspectors. If the duty and obligation of federal agents is to aid and assi local officials in inspections and searches, this necessarily implies the existence of a power in the Commonwealth to conduct inspections and searches; as corollary Puerto Rico has the power to conduct said searches without necessarily relying on federal assistance.

In view of the above statement, is is clear that Puerto Rico has a power to inspect and search at its borders identical to that of the states of the Union in their corresponding borders; and that besides, it has a power that is analogous to that of federal custom agents at the nation's borders. By virtue of each of these powers Puerto Rico derives the power to authorize the search for weapons, explosives and narcotics in cargo or luggage belonging to passengers arriving from the United States regardless of the reasonable grounds standards.

IV

Not one of the decisions of the highest court in the federal jurisdiction is contrary to the conclusions stated, not even taking into account Carroll v. United States 267 U.S. 132 (1925);

Almeida-Sánchez v. United States, supra, and United States v. Ramsey, supra, which reiterate the "distinction between internal searches within the nation which require probable cause and border searches."

This standard, at first glance, seems to be contradictory but it is not. Upon analyzing and applying case-law guidelines we cannot depart from the context in which they were stated and apply them blindly and mechanically to circumstances not contemplated when they were rendered. In Carroll, Almeida, and Ramsey federal agents and laws were involved. Carroll dealt with inspectors authorized to search vehicles for seizure of alcoholic beverages. An automobile was searched because its occupants had earlier tried to furnish them with alcoholic beverages; they had reason to believe they were transporters of intoxicating liquors; and it came from Detroit which was known as a center of introduction of alcoholic beverages into the country. The Court felt that said events constituted probable cause under the Fourth Amendment and that a search warrant was unnecessary.

Almeida and Ramsey, as we have seen, dealt with federal agents for customs and immigration, both having authority to conduct searches at national borders. The court acted correctly in applying the distinction between border searches and internal searches to these cases, since the authority vested in these agents to conduct searches is limited to the border, and they are not authorized

to search within the nation. Alcoholic beverage agents in Carroll, on the contrary, had authority to search in any part of the nation. The court feared that this federal power would be used in an indiscriminate manner to conduct searches in all parts of the country and therefore imposed the restriction on the searches so they could be conducted when there existed probable cause to believe that liquor was being transported.

It appears then that in the cases mentioned the court was dealing with federal agents and laws and it was with regard to said laws and agents that the court issued its pronouncements. State authority to conduct searches and inspections at its borders was not involved. This authority has not been at issue in any Supreme Court decision related to the Fourth Amendment.

With regard to this state authority at borders, the statements by the court itself in Carroll and recently repeated in Ramsey are pertinent to the effect that:

> "The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interest as well as the interests and rights of individual citizens." 267 U.S. 149 and footnote 14 in Ramsey.

The first ten amendments were proposed to the nation two years after the approval of the Constitution in 1787 and were ratified by various states on the years that followed. When said amendments were proposed state power for search and inspection was well known since it is a power that the Constitution itself acknowledges. This power was acknowledged by the Supreme Court in Gibbons v. Ogden, supra, three decades after the ratification of the first ten amendments by several states. It is evident, therefore, that if the Fourth Amendment is to be construed in the light of what was considered reasonable when it was adopted, said amendment cannot be interpreted nowadays in the sense that it confers an unreasonable character to state inspections and searches of luggage at airports and docks to control smuggling and dissemination of weapons, explosives and controlled substances on the country. "The Fourteenth Amendment is not a pedagogical requirement of the impracticable." Holmes, O. W., Dominion Hotel v. Arizona, 249 U.S. 265, 268 (1919).

We have seen that the Supreme Court has never required that state border inspections be conducted only when there is probable cause under the Fourth Amendment. We are very much in doubt that the Court will impose this requirement in the future since its state border inspections seek the same end that national border inspections do and said demand would have the effect of making this power for inspection inoperant.

On the other hand, authorized searches to seize weapons and explosives upon boarding airplanes strenghten our conclusion, since they establish another exception to the dogma against searches during interstate travel. Besides, said searches have the effect of eliminating the expectancy of privacy on the part of passengers about to board airplanes. Not only do they eliminate said epectancy, but the law presumes that consent exists for the search of persons and baggage boarding commercial flights. (49 U.S.C. 1511). If passengers have agreed to the search, the invasion of privacy is minimum and slight, when the search is conducted, as well as when passengers leave the plane.

We must know that although in United States v. Chadwick, decided on June 21, 1977, 45 L.W. 4797, the Supreme Court held that the privacy expectancies in luggage are greater than those existing with regard to an automobile, it also stated that baggage may be exposed to public view as a requirement for entry at borders or when traveling on a vehicle. The latter validates searches of suitcases belonging to individuals traveling on commercial airplanes.

Although the Supreme Court has not required that state inspections be justified, based on an urgent need, the search authorized by Act No. 22 satisfies this standard.

With regard to firearms and explosives, Puerto Rico's sitution is unique.

Due to the continuous threat to our internal security, the Legislature has adopted strict laws regarding possession, carrying, and sales of firearms, as well as sales and transportation of explosives. (25 L.P.R.A. § 411 et seq.) These laws have not served their purpose. One of the main reasons for this failure was that the illegal entry of weapons and explosives from the United States had not been controlled. Act No. 22, at issue in this case, sought to ward off this evil.

The smuggling of weapons in Puerto Rico increases the number of illegal weapons. In 1974, the number of illegal weapons was thought to be more than two-hundred and fifty-thousand, without taking into consideration those legally registered which were calculated at around 100,000.[4] Most of these weapons, illegally possessed, are in the hands of individuals connected with the underworld and have been brought from the United States. These figures are alarming, since the male population of Puerto Rico is of about one and a half million people.

Contrary to Puerto Rico's public policy, the possession and carrying of

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[4]Reports by the Commission for the Study of the Police presented to the Council for the Reform of Justice on January 23, 1974, p. 126.

weapons in the United States was traditionally considered an inalienable right of the people. This right was so deeply rooted when the nation was born that it was incorporated into the Constitution by way of the Second Amendment, which provides that "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

In United States v. Miller, 307 U.S. 174 (1939) the Supreme Court, seeking the roots of this constitutional amendment found that when it was proposed there were state laws which provided for a civil militia which required that people bear arms of their ownership. Nevertheless, the Supreme Court in view of the needs of our times has practically nullified the scope of this amendment. In Miller, the court sustained that the federal Weapons Law of 1934 could not constitute an assumption of state powers and it also stated that when lacking evidence to that effect, the argument that the weapon had any relationship whatsoever with an organized militia according to the Second Amendment could not be sustained. Before Miller, the doctrine existed to the effect that the Second Amendment constituted a prohibition against the federal government but not against state governments which had extensive powers to ban weapons. See People v. González, 36 P.R.R. 222 (1927) and People v. Díaz Cintrón, 36 P.R.R. 514 (1927).

In view of the shocking increase in the criminality rate of the nation in recent years, Congress determined that the ease with which states authorize the possession and sale of weapons could no longer be tolerated and in 1968 it enacted the Gun Control Act which channeled the sale of weapons through licensed firearms dealers and forbade the sale of weapons to certain individuals, or when the sale is contrary to a state law.

Upon the adoption of this Act the Congress determined that violent criminality in the United States was due mostly to the ease with which weapons could be obtained; that there was a widespread traffic in firearms and that these were available to persons whose possession was contrary to the public interest. The purpose of the 1968 Act was to curb crime by keeping weapons away from the hands of incompetent individuals and of those with a criminal background. For the legislative history see Huddleston v. United States, 415 U.S. 814, 824-829 (1974). See also note 11 in Scarborough v. United States, decided on June 6, 1977 (45 L.W. 4570), where it was held that Congress found that state laws were not adequate for forbidding the possession of weapons by individuals who would probably use them for illegal purposes; and that Congress intended to contribute to the state's efforts. See also, Barret v. United States, 423 U.S. 212 (1976).

The federal law on Gun Control (18 U.S.C. §§ 921-928) extends its

application to Puerto Rico and its Statement of Motives is embodied in § 921. Among the prohibitions set forth in said law with regard to weapons in interstate commerce, the traffic is limited to licensed firearms dealers and the transport and receival of weapons by individuals who obtain them outside of the state of residence is forbidden. The sale of weapons to persons accused of felonies, to fugitives, drug addicts and persons with mental defects is also forbidden. The law clearly states that its purpose is not that of pre-empting state legislation on the matter. In its § 923 it authorizes inspections of the premises of any firearms or ammunition importer, manufacturer, or dealer. In United States v. Biswell, 406 U.S. 311 these inspections were validated. The Court decided that a search warrant is not necessary when the law authorizes a regulatory search; this inspection contributes to an urgent federal need; and the possibilities of abuse and threat to privacy are not of an impressive dimension. It also stated that if the law is to be complied with and the inspection made effective, an inspection without a warrant should be considered reasonable according to the Fourth Amendment. With regard to interstate traffic of firearms, it stated:

> ". . . but close scrutiny of this traffic is undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms

traffic within their borders . . . . . Large interests are at stake, and inspection is a crucial part of the regulatory scheme . . ." (Underscore supplied).

V

The pronouncements of the Supreme Court with regard to weapons traffic and inspections, are particularly interesting in the case of Puerto Rico. Our Act only authorizes the carrying and transportation of weapons by particular citizens under two specific circumstances and in both cases the person must obtain the license in advance at the Superior Court. The first is when a person carries money, while in the act of transporting it (25 L.P.R.A. § 430(b) 6); and the second is when a risk of death or serious bodily injury is established (25 L.P.R.A. § 431).

If our law is to be complied with, the inspection of suitcases and packages from the United States at airports and docks is imperative. If not, our law would continue being ineffective and the shocking use of weapons in felonies against the person and his property and its dissemination among individuals of the underworld would continue. The introduction of weapons into Puerto Rico by individuals not authorized to do so is illegal according to our law as well as to the federal law. Both our government and the Federal government consider the prevention of this evil an urgent

need. The Fourth Amendment was not adopted to impose intellectual nearsightedness on the states in handling the serious problems that threaten their internal security. The Supreme Court itself acknowledged that the inspection system provided by the federal law is an essential element to enforce this law.

Likewise, the inspection in search for drugs, represents another effort by Puerto Rico to avert an evil which is destroying the foundations of our society. There is a close relationship between the traffic and use of narcotics and the rise in criminality throughout the country. The common citizen no longer feels safe in his home, in his car, nor when walking through the streets; but not because of the use and traffic of narcotics in itself, but because of the carrying and use of lethal weapons by individuals related to their illegal commerce. The attention caught by the criminal aspects of the traffic and use of narcotics has diverted the knowledge of the true finality of laws on drugs, whose objective is preventing their use because of the threat to public health. We have seen, when discussing state power to inspect, that the protection of public health is a valid constitutional exercise of this power.

Finally, constitutions as well as laws should respond to the social realities they serve. When, due to rigid interpretation full of abstract theories, there is a gap between reality and legal

precepts, the utility of the constitutional document is paralyzed. "The most liberal protection of individual rights established . . . in the Bill of Rights, cannot disregard the basic principle that the health of the people is the supreme law. Individual rights have to be understood within the general picture of society according to the limitations of life in common." Journal of the Constitutional Convention, op. cit., 2576. I am convinced that in the conflict between private individual value and public communitary value in the instant case, the latter should prevail as it was conceived by the Legislature and authorized by the constitutional structure in force.

APPENDIX B

IN THE SUPREME COURT OF PUERTO RICO

The People of Puerto Rico, Plaintiff and appellee v. No. Cr-77-24 Terry Terrol Torres Lozada, Defendant and appellant	Judgment of Charles E. Figueroa, Judge, Superior Court, San Juan Part Article 404, Controlled Substances Act

JUDGMENT

San Juan, Puerto Rico, December 14, 1977

The search of appellant's belongings being based on the provisions of Act No. 22 22 of August 6, 1975, and considering the absence of the majority vote required by the Constitution to annul said Act,(*)

(*)Article 5, Sec. 4, provides:

"The Supreme Court shall sit, in accordance with rules adopted by it, as a full court or in divisions composed of not less than three justices. No law shall be held unconstitutional except by a majority of the total number of Justices of which the Court is composed in accordance with this Constitution or with law."

the judgment appealed is affirmed. Mr. Justice Rigau took no part in this decision. Mr. Justice Irizarry Yunqué delivered an opinion based on the unconstitutionality of said law. Mr. Chief Justice Trías Monge and Mr. Justice Dávila and Torres Rigual concur with said opinion. Mr. Justices Martín, Díaz Cruz, and Negrón García rendered separate opinions establishing the legality of the search and the constitutionality of the law.

It was so decreed and ordered by the Court and certified by the Chief Clerk.

Ernesto L. Chiesa
Chief Clerk

APPENDIX C

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

THE PEOPLE OF PUERTO RICO	CRIMINAL NO. G76-3105
V.	RE:
TERRY TERROL TORRES LOZADA	CONTROLLED SUBSTANCES ACT

RESOLUTION AND ORDER

BRIEF STATEMENT OF THE CASE

That defendant, Terry Terrol Torres Lozada, was charged with a violation of art. 404 of the Controlled Substances Act--possession of the controlled substance known as marihuana on August 6, 1976, at the Isla Verde International Airport--after the Police of Puerto Rico searched his suitcases pursuant to the provisions of Act No. 22 of August 6, 1975, which allows the inspection of luggage, packages, bundles, and bags of passengers and crew members arriving at the airports and piers of Puerto Rico from the United States.

The hearing for the case began on October 26, 1976, and lasted until the next day, when the government rested its case, which consisted in the testimony of agent Rubén Marcano, of the Criminal

Investigations Bureau, and the testimony of Mr. Héctor L. Torres, Chemist of the Criminal Investigations Laboratory of the Puerto Rico Police Department, which was stipulated.

When the government offered into evidence the objects seized in one of defendant's suitcases, to wit: a foil-lined white paper bag labeled "Pepperidge Farm" containing "picadura"* and a black cloth bag with the word "Prominence" printed on it, which contained a brown wooden pipe and a black mouthpiece, with residues on its inner walls, the defendant objected to their admission into evidence because he understood that they had been seized in violation of the Fourth Amendment of the Constitution of the United States and of Art. II, Sec. 10, of the Constitution of the Commonwealth of Puerto Rico. He also contended that if agent Rubén Marcano had acted essentially on the authority granted by Act No. 22 of August 1975, this act was unconstitutional from its face because it was against the constitutional provisions mentioned above.

After hearing oral arguments on the question of law raised, the court decided to issue the resolution on the question

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*[Translator's Note: "Picadura" is a shredded or shag-like substance. It may refer either to tobacco shag or to cut marihuana.]

raised after the parties had presented their arguments in writing in their respective memorandums of authorities, because it understood that the question was one of first impression and of great importance. The memorandums of authorities have been submitted by the parties and considered by the Court.

On the basis of the evidence offered, admitted, not contested, and believed, the Court makes the following

FINDINGS OF FACT

On August 6, 1976, Mr. Terry Terrol Torres Lozada arrived at the International Airport of Puerto Rico from Miami on board Eastern Airlines flight No. 915. Upon his arrival at the airport's baggage claim area, defendant Terry Terrol Torres Lozada seemed somewhat nervous, followed with his eyes the movements of agent Rubén Marcano, who was on duty at the International Airport wearing full uniform and carrying his service revolver at that checkpoint for passengers coming from the United States.

Agent Marcelino Santiago, of the Criminal Investigations Bureau's Division of Search and Patrol of Ports and Airports was in the aforementioned place in civilian clothes, that is, he was not wearing his uniform that day while he was on duty and, upon noticing Mr. Torres Lozada's attitude, advised agent Marcano of the same. Agent Marcano confirmed this information.

When Mr. Torres Lozada picked up his baggage and was about to leave the baggage claim area with it, he was stopped by agent Santiago, who showed him his identification card as agent of the Criminal Investigations Bureau (C.I.B.), and a card with information on Act No. 22 of August 6, 1975. At this moment, agent Marcano approached them to continue the routine investigation, and asked Mr. Torres Lozada to accompany him with his luggage to the Criminal Investigations Bureau's (C.I.B.) office at said air terminal, to which the former agreed after being shown the provisions of Act No. 22 of August 1975 contained in a card provided by the Puerto Rico Police Department.

Once inside the C.I.B.'s office, agent Marcano allowed defendant Torres Lozada to read the card. When asked if he had understood what the law said, defendant answered in the affirmative and asked that he be permitted to call his attorney. The agent told him that since no offense had been committed yet, there was no need for an attorney. He was also told that if it appeared that he had committed an offense, he would be allowed to call his attorney, and if he had none the State would appoint one for him. Defendant insisted on calling his uncle, attorney Celedonio Medín Lozada, in Mayaguez. Agent Marcano repeated that he would have the right to communicate with his attorney if it appeared that he had committed an offense; he was told that it was only

a routine baggage search, like that of all passengers inspected pursuant to Act No. 22 of August 6, 1975.

At this moment, Mr. Torres Lozada agreed to the inspection of his suitcases and opened the combination locks on the same. As a result of the inspection made, a paper bag containing cut marihuana was seized from defendant's luggage, for which reason he was immediately arrested. Agent Marcano continued to search the luggage and seized a smoking pipe containing marihuana residues and a considerable amount of money in bills of different denominations.

At the hearing for the case, agent Marcano testified that he is familiar with different kinds of controlled substances, including marihuana, because he has been trained on this and he had worked for the Narcotics Division of the Puerto Rico Police Department for approximately two and half years. The evidence seized by agent Marcano was analyzed by chemist Héctor L. Torres, of the Criminal Investigations Laboratory of the Puerto Rico Police Department, who determined that it was cut marihuana.

Agent Marcano also stated that, at the Isla Verde Airport there are warnings informing arriving passengers that their luggage may be inspected under Act No. 22 of August 6, 1975, that there are no similar warnings in the airplanes and that he thinks, although he cannot categorically assert it, that there are no

warnings regarding the effectiveness and scope of Act No. 22 of August 1975 in the airports from where the airplanes depart on their domestic flights. That his intervention was partly due to the defendant's conduct and to the way he was dressed, but was rather based on the authority granted by Act No. 22 of August 1975, and that the defendant was not a suspect.

Considering the foregoing findings of fact, the Court has arrived at the following

CONCLUSIONS OF LAW

Act No. 22 of August 6, 1975, provides the following in its first section:

> "The Police of Puerto Rico is hereby empowered and authorized to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States, to examine cargo brought into the country and to detain, question, and search those persons whom the police have ground to suspect of illegally carrying firearms, explosives, narcotics, depressants or stimulants or similar substances."
> (Underscore supplied.)

We should then immediately decide if said Act, in its wording and content, requires that there be previous grounds for an agent to inspect a passenger's luggage when he disembarks at any airport or dock of Puerto Rico from the United States.

A careful reading of that first section of the Act herein attacked as unconstitutional convinces us that the purpose of the lawmaker when drafting and enacting it was not to require the law enforcement officer assigned to these functions to have previous reasonable grounds to justify the inspection or checking of the luggage, packages, bundles, and bags of the passengers and crew members who arrive at the airports and docks of Puerto Rico from the United States. Reasonable grounds are indeed required, matching Rule 11 of the Rules of Criminal Procedure, when the agent intends to stop the passenger himself, when the agent intends to detain, interrogate, and search the passenger because he is believed to be illegally carrying firearms, explosives, controlled substances, depressants or stimulants or similar substances about his person.

Defendant asks us to decide that the reasonable grounds requirement of said Act be extended to baggage searches of passengers arriving at a Puerto Rican airport from the United States, as in his case, because he understands that this is the only fair, reasonable

interpretation of Act No. 22 of August 6, 1975 under the provisions of the constitutional guarantee of the Fourth Amendment of the United States Constitution and Article II, Section 10, of the Constituion of the Commonwealth of Puerto Rico.

We cannot agree with defendant's position. The law in question is clear as to its motives and the ends it pursues and neither its wording or its content is ambiguous or subject to judicial interpretation. It is our opinion that under this act, the reasonable grounds requirement only has to be met when the agent intends to detain and eventually search the passenger, not his luggage. If we were to decide on the contrary, this Court would be legislating through judicial fiat, and this the Constitution precludes us from doing. This function pertains to another branch of government, to wit, the Legislature of Puerto Rico.

It is thus held that said act does not require the agent to have reasonable grounds to inspect the luggage of a passenger or crew member coming from the United States who disembarks at a port or airport of Puerto Rico. In the instant case, it is also held that defendant's conduct, as observed by agent Marcano, and the information received from agent Santiago, do not constitute, in our judgment, the reasonable and supported grounds required of a law enforcement officer to justify, ordinarily, the arrest of a citizen in accordance with our case law, but we can consider it suspicious conduct that could justify a

border search, in accordance with some cases in the federal case law.

We shall now determine if this first section of the act is unconstitutional because it contravenes the Fourth Amendment of the United States Constitution and Article II, Section 10, of the Constituion of the Commonwealth of Puerto Rico upon authorizing the inspection of luggage, bundles, bags, and packages of passengers and crew members who arrive at piers and airports of Puerto Rico from the United States.

Both the Fourth Amendment of the U. S. Constitution and Article II, Section 10, of the Constitution of the Commonwealth of Puerto Rico provide that the right of the people to be secure in their persons, houses, papers, documents, belongings and effects against unreasonable searches and seizures shall not be violated. Warrants for arrest, search or seizure shall only be issued under judicial authority, and only when there is probably cause, supported by oath or affirmation, describing in detail the place to be searched and the persons to be arrested or the things to be seized--so far with the similarity between both constitutional provisions. Our Constitution has an additional provision, not contained in the Constitution of the United States but which has been adopted in U. S. case law. It reads as follows: "Evidence obtained in violation of this section shall be inadmissible in the courts." Although these constitutional

provisions bar searches or seizures without a judicial order, both the U. S. and our Supreme Court have recognized some exceptions to the general principle.

Among the exceptions recognized, to mention a few, are the search incidental to a legal arrest, the search wherein the property to be seized is in the process or in imminent danger of destruction and the search prior to arrest when the circumstances make it imperative, such as when the life of the agents or of other persons would be endangered if the search is not carried out.

One of the exceptions to the constitutional protection of the Fourth Amendment allowed by the courts in the federal jurisdiction is the so-called border search; also the search carried out in airports and piers, since the purpose of both is to uncover smuggling, rather than to detect and investigate crimes already committed.

Federal Customs and Immigration officials who inspect luggage and persons at the borders of the United States are authorized to carry out their work under the mere suspicion that there is or illegal merchandise. Likewise, the search of vessels and vehicles for contraband is justified. Said inspection without a warrant and without the need for reasonable grounds is allowed both for aliens as well as for American citizens coming from abroad.

In Henderson v. United States, 390 F.2d 805 it was held that: "Border searches are unique and the mere fact that a person is crossing the border is sufficient cause for a search. Thus every person crossing our border may be requried to disclose the contents of his baggage, and of his vehicle, if he has one; even mere suspicion is not required."

In John Bacall Imports, Limited v. United States, 287 F. Supp. 916 it was held, regarding this matter of border searches: "Border searches are outside the protection of this amendment and a search which would be unreasonable if conducted by the police in an ordinary case, may be reasonable when conducted by customs officials in lawful pursuit of unlawful imports, but only when incident to a border search."

Finally, with regard to border searches we shall point out the case of United States v. Stornini, 443 F.2d 833, (Ct. App. 1st Cir.), where it was held that: "Customs officials may serach an individual's baggage and outer clothing in a reasonable manner, based on subjective suspicion alone, or even on a random basis.", and that of Cervantes v. United States, 263 F.2d 800 (9th Cir.) where it was stated: "For the normal border serach of such things as cars, suitcases, and handbags, no showing of probable cause, or even supported suspicion, is necessary." See also: Almeida Sánchez v. United States, 413 U.S. 266 (1973) and Carroll v. United States, 267 U.S. 131 (1925).

It is a well-known fact that Puerto Rico faces a serious problem with the traffic and smuggling of narcotics, firearms and explosives on the part of individuals who travel freely between Puerto Rico and the United States. Said problem has worsened during the last few years notwithstanding the measures taken by local as well as federal authorities to cope with the same. This is particularly due to the fact that Puerto Rico does not have, at its airports and piers, an office for the inspection of luggage, packages, bundles and bags of passengers and crew members who travel between Puerto Rico and the United States. The need arose for the government of the Commonwealth of Puerto Rico to set up some sort of effective and corrective measure to eliminate this increasing illegal traffic which was progressively becoming more profitable, in view of the fact that there was no control on the part of the United States government. As far as we know, the federal government exerts no effective control in this area; it only carries out sporadic inspections through the U. S. Department of Agriculture when checking for tropical fruits and plants which may be harmful to public health and agriculture.

We don't have the slightest doubt that it was imperative that the local government take necessary and effective steps to cope with this problem. We have no doubts either as to the fact that said area is not covered by federal agencies whose function it is to protect the territorial borders of the

United States against the illegal entry of persons and smuggled goods from abroad. This is not a case of the federal government preempting the field or covering the area of the state or local government, which could give rise to problems of jurisdiction or conflict of authority between both governments.

Areas not regulated by the federal government or expressly barred to local governments by the Constitution of the United States may be regulated by the latter through legislation, in the unquestionable exercise of their police power.

Our geographic location, the fact that we are an island and do not share common borders with other nations, has not constituted an effective natural barrier to the free and continuous flow and movement of people between Puerto Rico and the United States and between Puerto Rico and other faraway parts of the world. This is due to modern transportation means and to the availability of the same brought about by recent technological advances in a world in constant change, such as ours. Said increase in the flow of passengers between Puerto Rico and the United States and other parts of the world, and the failure to inspect the luggage of passengers and crew members on domestic flights, have served as fertile ground for ambitious and unscrupulous people who try to profit from said circumstances.

This court takes judicial notice of the fact that, in proportion to size, the

Isla Verde International Airport is one of the busiest airports in terms of passenger and cargo traffic in the whole world.

In our opinion, this is the correct perspective for viewing and resolving questions raised before us. Faced with this problem, the local government had the obligation of taking the most vigorous and effective action it could to correct said situation. We cannot think of any other action that could be more direct and more effective in the solution of this great problem the country faced and still faces than to legislate authorizing police authorities to inspect the luggage, packages, bundles and bags of passengers and crew members who disembark in Puerto Rican airports and piers on arrival from the United States. It is our opinion that the present circumstances and the magnitude of the problem made imperative the passage of the legislation enacted and whose constitutionality is now challenged before this Court. There are legitimate public interests to justify said legislation. We could not and should not forget that the social harm caused by this is not only limited to the legal violations, such as the introduction into the country of drugs, explosives and firearms in a clandestine fashion, but we should have in mind that these are the instruments used in the commission of more serious crimes, such as robbery, murder, damages to public and private property through the use of explosives, and even sometimes death of innocent people, and especially the

terrible crime of narcotic drugs, through which a trafficker profits from human misery and from the grief and sorrow of other people. These factors, among others, carry a lot of weight on the attitude of this Court and have been seriously considered and weighed with the defendant's right to the protection of the Fourth Ammendment of the U.S. Constitution and the protection provided by our own Constitution.

Since compelling public interests are involved in this problem, it was imperative to draft legislation, such as the one treated here, that would allow the State to deal directly and effectively with the continuous violations of law represented by this illegal traffic of firearms, explosives and narcotics between the United States and Puerto Rico.

When asked to construe the constitutionality of this Act, it is imperative that we apply, by analogy, the exception to the constitutional protection established through case law with regard to border searches because of the peculiar condition of our island, the unrestricted ease with which American citizens travel from any point in the United States to Puerto Rico, and vice versa, the frequency with which domestic flights arrive at and depart from our airport, and also because the inspection carried out under this Act is not covered by the Federal government.

In arriving at this conclusion, we have not forgotten the constitutional

guarantees pointed out to us which have made the American nation and its judicial system great and which, like ours, has distinguished itself as an avant-garde one which continually protects the rights of citizens. But, Puerto Rico's present circumstances require that courts re-examine the legal doctrines in effect, adapt Law to our times, and adopt the rules that best serve the interests of society as a whole, particularly when public safety and perhaps even its own existence are at stake.

There are times when the right of the citizen should yield to the right of the whole community to be able to walk its streets freely without fear of being mugged, mutilated, or perhaps murdered and not fearful that one of its children may be pushed into drug addiction. Because of the weight and importance of public interest in this case, the State is forced to take these measures of self-protection, even at the price of individual rights which were once absolutely inviolable and sacred. The harm or inconvenience that may be caused to a citizen, whether a passenger or crew member, is minimal if we compare it with the benefits sought with said legislation.

This court understands that this Act is not unreasonable or burdensome and that, as it has been applied up to the present, it does not interfere with interstate commerce; on the contrary, it complements the federal government's investigative function exercised at "our borders" or territorial limits.

In the case of Edwards vs. Cal., 314 U.S. 160 (1941) at page 172, the Supreme Court of the United States recognizes that: "States are not wholly precluded from exercising their police power in matters of local concern even though they may thereby affect interstate commerce."

On this point, also see: California vs. Thompson, 313 U.S. 109 (1941).

On this basis of these conclusions, this court hereby dismises the objection raised by defendant to the admissibility of evidence and consequently orders that the same be admitted and marked with the corresponding exhibit number in the order they were offered.

To be notified.

Given in Open Court this 22nd day of December, 1976 and transcribed this 29th day of December, 1976.

CHARLES E. FIGUEROA ALVAREZ
Superior Court Judge

ATTEST:

BELEN BONIT
CLERK

DORIS MORALES
SUPERVISOR CRIMINAL DIVISION

NOTIFIED:

Hon. Federico L. Torres
Box 192
San Juan

Lcdo. Luis Lamberty González
Cond. El Centro II-Suite 607
500 Muñoz Rivera Avenue
Hato Rey 00918

I HEREBY CERTIFY that on this ____ day of January 1977 I sent a copy of this resolution and order to the persons mentioned above to their respective addresses.

Deputy Clerk

APPENDIX D

IN THE SUPREME COURT OF PUERTO RICO

THE PEOPLE OF PUERTO RICO Plaintiff-appellee v. No. Cr-77-24 TERRY TERROL TORRES LOZADA Defendant-appellant	Judgment of the Superior Court, San Juan Part, Charles E. Figueroa, Judge Article 404, Controlled Substances Act

= A P P E A L =

TO THE HONORABLE COURT:

Comes now defendant, represented by the undersigned attorneys, and very respectfully states that, feeling aggrieved with the judgment rendered by this Hon. Court on December 14, 1977, affirming the judgment rendered by the Superior Court, San Juan Part, on January 7, 1977, he shall appeal the same before the Honorable Supreme Court of the United States.

Defendant-appellant prays this Honorable Court to direct the Chief Clerk to translate the record of this case into the English language; to

certify said transaction upon payment of the required fees and to send it to the Honorable Supreme Court of the United States.

San Juan, Puerto Rico, this 21st day of December 1977.

Celedonio Medín Lozada
Celedonio Medín Lozada Gentile
Attorneys for Defendant-Appellant

By: (Sgd.) Celedonio Medín Lozada

I CERTIFY: That on this same date I have served a copy of the foregoing appeal upon Att. Héctor A. Colón Cruz, Solicitor General, Department of Justice, Box 192, San Juan, Puerto Rico.

(Sgd.) Celedonio Medín Lozada

APPENDIX E

IN THE SUPREME COURT OF PUERTO RICO

THE PEOPLE OF PUERTO RICO Plaintiff and appellee v. No. Cr-77-24 TERRY TEROL TORRES LOZADA Defendant and appellant	Judgment of the Superior Court, San Juan Part, Charles E. Figueroa, Judge Article 404, Controlled Substances Act

= AMENDED NOTICE OF APPEAL =

TO THE HONORABLE SUPREME COURT

Pursuant to Rule 10 of the Rules of the Supreme Court of the United States, appellant Terry Terol Torres Lozada hereby amends his notice of appeal in order to add the following:

1. The party appealing is Terry Terol Torres Lozada, Appellant;

2. Appellant appeals the judgment affirming his conviction.

3. The appellate jurisdiction of the United States Supreme Court is based on the provisions of 28 U.S.C.A. § 1258.

4. The appeal is based on the fact that he was convicted on evidence obtained in violation of his rights under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. In addition, appellant maintains that the application of Article 5, Section 4, of the Constitution of the Commonwealth of Puerto Rico to this case deprives him of his rights under the Fourth Fifth, and Fourteenth Amendments of the United States Constitution, since his conviction was affirmed notwithstanding that the majority of the justices who took part in the case are of the opinion that the evidence on which appellant's conviction was based was obtained in violation of the United States Constitution.

In Mayaguez for San Juan, Puerto Rico, this 11th day of January 1978.

I, Celedonio Medin Lozada, of age, married, lawyer, and resident of Mayaguez, Puerto Rico, do hereby state under oath that on this same date I have served by mail a copy of the foregoing notice upon the Honorable Solicitor General, Department

of Justice, Box 192, San Juan, Puerto Rico.

(Sgd.) Celedonio Medín Lozada
CELEDONIO MEDIN LOZADA
One of the Attorneys
for Appellant

AFF. NO. 2658

Sworn to and subscribed before me by Don Celedonio Medín Lozada, of the aforesaid personal circumstances, personally known to me, at Mayaguez, Puerto Rico, on this 11th day of January, 1978.

(Sgd.)
Miguel Hernández Colón
NOTARY PUBLIC

(Notarial Seal)

APPENDIX F

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE II, SECTION 10, OF THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO (48 U.S.C. § 731d):

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Wire-tapping is prohibited.

No warrant for arrest or search and seizure shall issue except by judicial authority and only upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons to be arrested or the things to be seized.

Evidence obtained in violation of this section shall be inadmissible in the courts.

ARTICLE V, SECTION 4, OF THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO (AS QUOTED BY THE PUERTO RICAN SUPREME COURT, APPENDIX B):

The Supreme Court shall sit, in accordance with rules adopted by it, as a full court or in divisions composed of not less than three Justices. No law shall be held unconstitutional except by a majority of the total number of Justices of which the Court is composed in accordance with this Constitution or with law.

The version quoted by the Puerto Rican Supreme Court differed slightly from that in 48 U.S.C. § 731d; which read as follows:

The Supreme Court shall sit, in accordance with rules adopted by it, as a full court or in divisions. All the decisions of the Supreme Court shall be concurred in by a majority of its members. No law shall be held unconstitutional except by a majority of the total number of Justices of which the Court is composed in accordance with this Constitution or with law.

PUBLIC LAW 22: 7th SPECIAL SESSION - 7th ASSEMBLY, COMMONWEALTH OF PUERTO RICO

Police - Inspection of Luggage, etc., of Passengers and Crew

[No. 22]
[Approved August 6, 1975]

AN ACT

To empower and authorize the Police of Puerto Rico to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States; to examine cargo brought into the country, and to detain, question and search those persons whom the Police have ground to suspect that are illegally carrying firearms, explosives, narcotics, depressants or stimulants or similar substances.

STATEMENT OF MOTIVES

Puerto Rico is at present entangled in a vigorous campaign directed to prevent the buying and selling, transfer and use of narcotic drugs, firearms, and explosives.

It is widely known that among passengers and crew who arrive in the Island from the United States, there are persons who illegally bring with them or in their luggage, bundles, bags, and packages, firearms, explosives, narcotic drugs and other substances controlled by law. The Federal Government does not require these passengers or crew to go through the Customhouse after arrival in the Island for inspection of their luggage or person. This has contributed greatly to an increase in the smuggling of firearms, explosives, and narcotic drugs by this means, with its concomitant results which are manifested by a rise in criminality and greater insecurity among the citizenship.

The inspection of luggage, cargo and persons to reduce the introduction of firearms, explosives, and narcotic drugs illegally brought from the United States to Puerto Rico is a legitimate area of control on the part of our government in exercising its police power, especially when the same is not covered by the Federal Government, and there is no conflict of authority on this matter between both governments.

Be it enacted by the Legislature of Puerto Rico:

Section 1. -

The Police of Puerto Rico is hereby empowered and authorized to inspect the luggage, packages, bundles, and bags of passengers and crew who land in the airports and piers of Puerto Rico arriving from the United States; to examine cargo brought into the country, and to detain, question, and search those persons whom the Police have ground to suspect of illegally carrying firearms, explosives, narcotics, depressants or stimulants or similar substances.

Section 2. -

Advertisement of the provisions of this act shall be placed in a visible place on piers and airports by the Police of Puerto Rico for all landing passengers.

Section 3. -

Personnel assigned to implement this act shall wear a uniform as determined by the Police Superintendent, and shall be provided with credentials to be shown to the persons concerned before searching them. The search shall be in a respectful way, and as brief as possible.

Manual search of persons shall be carried out by individuals of the same sex as the person involved, and in appropriate places guaranteeing the greatest privacy.

Section 4. -

The Police Superintendent may request the cooperation and collaboration of any Commonwealth or Federal Agency or department whenever necessary and pertinent for the purposes of this act.

Section 5. -

Funds for the enforcement of this measure shall be appropriated in the General Budget of the Police of Puerto Rico.

- Laws of Puerto Rico, 1975, West, pp. 658-659